make an independent decision not adversely affected by conclusions that over and over have proven, witness by witness, allegation by allegation, to be inaccurate and unwarranted and not an appropriate basis for the exercise of federal prosecutorial authority.

KIRKLAND & ELLIS LLP

SUMMARY OF MISCONDUCT ISSUES IN THE MATTER OF JEFFREY E. EPSTEIN

The manner in which federal prosecutors have pursued the allegations against Mr. Epstein is highly irregular and warrants full review by the Department. While we repeatedly have raised our concerns regarding misconduct with the United States Attorney's Office in Miami (the "USAO"), not only has it has remained unwilling to address these issues, but Mr. Epstein's defense counsel has been instructed to limit its contact to the very prosecutors who are the subject of this misconduct complaint. For your review, this document summarizes the USAO's conduct in this case.

Background

1. In March 2005, the Palm Beach Police Department opened a criminal investigation of Palm Beach resident, Jeffrey E. Epstein. The press has widely reported that Mr. Epstein is a close friend of former President Bill Clinton.

2. In July 2006, after an intensive probe, including interviews of dozens of witnesses, returns of numerous document subpoenas, multiple trash pulls and the execution of a search warrant on his residence, Mr. Epstein was indicted by a Florida Grand Jury on one count of felony solicitation of prostitution.

3. In a publicly released letter, Palm Beach Police Chief Michael Reiter criticized the Grand Jury's decision and the State Attorney's handling of the case. Shortly after the Grand Jury's indictment, the Chief took the unprecedented step of releasing his Department's raw police reports of the investigation (including Detective Recarey's unedited written reports of witness statements and witness identification information), that were later proven to be highly inaccurate transcriptions of witnesses' actual statements. The Chief also publicly asked federal authorities to prosecute the case.

Jeffrey [redacted] Becomes Involved in Mr. Epstein's Case at the Earliest Stage

4. In early November of 2006, Epstein's lawyers had their initial contact with the newly assigned line federal prosecutor, [redacted]. Although it is extremely unusual for a First Assistant United States Attorney to participate in such a communication, FAUSA Jeffrey [redacted] was present on that very first phone call.

5. On November 16, 2006, despite that the fact that the investigation exclusively concerned illegal sexual conduct during massage sessions, AUSA [redacted] issued irrelevant official document requests seeking Mr. Epstein's 2004 and 2005 personal income-tax returns, and later subpoenaed his medical records. *See* Tab 16, November 16, 2006 Letter from M. [redacted].

[redacted] Becomes Personally Involved in a Dispute Over Another State Sex Case

6. In March 2007, FAUSA [redacted] reported to local police an attempted trespass by a 17-year-old male. Mr. [redacted] claimed that the individual had attempted to enter Mr. [redacted] home without invitation to make contact with his 16-year-old daughter, but he spotted the young man before the perpetrator had an opportunity to enter the house. The

same individual had previously fled the home of another neighbor after entering that house uninvited, when, looking for the bedroom of their 17-year-old daughter, he mistakenly entered the bedroom of their 14-year-old daughter, touched her on the leg and startled her awake. *State of Florida* [redacted]. *Johnathan Jeffrey Zirulnikoff*, Case No. F078646 (June 28, 2007).

7. After a thorough review by the Miami State Attorney's Office, and sex-crimes prosecutor Laura Adams, the investigation revealed that the defendant and both the neighbor's 17-year-old daughter and Mr. [redacted] daughter were previously acquainted. The defendant was charged with simple trespass in connection with his unauthorized entry into the neighbor's house. *Id.*

8. FAUSA [redacted], however, demanded that the young man be *registered as a sex offender* and objected to any sentence short of incarceration. The Assistant State Attorney in charge of the sex-crimes unit reported Mr. [redacted] conduct during the proceedings as "outrageous." The defendant's attorney described Mr. [redacted] as being "out of control." Shortly after, Mr. [redacted] began publicly deriding the elected State Attorney, his office and the state process for prosecuting sex offenses, as "a joke."

Unauthorized Tactics in Disregard of the United States Attorney's Manual are Used

9. In June 2007, AUSA [redacted] subpoenaed the investigating agent of Epstein's attorney, Roy Black, in a clear effort to invade the defense camp. The subpoena was specifically drafted to discover the investigator's contacts, with all prospective witnesses, Mr. Epstein and his attorneys.[1] Not surprisingly, Ms. [redacted] issued this subpoena *without the requisite prior approval* by the DOJ's Office of Enforcement Operations. *See* United States Attorneys' Manual, § 9-13.410. When confronted, she misleadingly responded that she had consulted with the Department of Justice and *was not required to obtain OEO approval* because her subpoena was not directed to "an office physically located within an attorney's office." *See* Tab 18, December 13, 2007 Letter from M. [redacted] at 4 n.1. This answer clearly suggests that Ms. [redacted] had intentionally misled the Department officials about the items that her subpoena sought.[2]

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[1] The subpoena sought, among other things: "All documents and information related to the nature of the relationship between [the investigator and/or his firm] and Mr. Jeffrey Epstein, including but not limited to . . . records of the dates when services were performed . . . telephone logs or records of dates of communications with Mr. Epstein (or with a third party on Mr. Epstein's behalf); appointment calendars/datebooks and the like (whether in hard copy or electronic form) for any period when work was performed on behalf of Mr. Epstein or when any communication was had with Mr. Epstein (or with a third party on Mr. Epstein's behalf) . *See* Tab 17, June 18, 2007 Subpoena to William Riley/ Riley Kiraly, ¶ 3.

[2] Indeed, we are aware of two other recent instances in which [redacted] placed serious misrepresentations before a court. On July 31, 2007, in the grand-jury litigation arising out of this case, she filed the "Declaration of Joseph Recarey," attaching the state detective's affidavit in support of a search warrant for Epstein's house. *See In Re Grand Jury Subpoenas Duces Tecum OLY-63 and OLY-64*, No. FGJ 07-103(WPB) (S.D. Fla. July 31, 2007). At the time she filed Detective Recarey's affidavit, she knew it contained numerous material misrepresentations, including gross misstatements of witness statements and other evidence. Second, we (Continued...)

Mr. Epstein is Required to Agree to Civil Liability In Order to Avoid a Federal Indictment

10. On July 31, 2007, during negotiations over a possible federal plea agreement, FAUSA [redacted] and AUSA [redacted] demanded that Mr. Epstein agree to the imposition of civil liability under 18 U.S.C. § 2255 as a pre-condition to deferral of federal prosecution. To the best of our knowledge, the inclusion of such a term in a deferred prosecution agreement of this kind is absolutely unprecedented.[3] Specifically, Ms. [redacted] demanded that Mr. Epstein waive the right to contest civil liability to a list of individuals she said were "victims" of § 2255, ***whose names, however, she refused to disclose,*** and agree to ***pay damages of a minimum of $150,000*** to each and every one of such undisclosed individuals, and ***hire an attorney to represent them if they decided to sue him***. *See* Tab 20, July 31, 2007 Draft of Deferred Prosecution Agreement.

11. FAUSA [redacted] and AUSA [redacted] insisted that the identities of the individuals on the list not be disclosed to Mr. Epstein or his counsel ***until after Mr. Epstein was already sentenced*** in the state case.

    (a) Over the next two months, Mr. [redacted] refused to negotiate these terms. They ultimately became incorporated into the final deferred prosecution agreement. *See* Tab 21, September 24, 2007 Non-Prosecution Agreement, ¶¶ 7-11.

    (b) It was not until seven months later, in February 2008, that Epstein's lawyers were able to take their first official statement from one of the women FAUSA [redacted] alleged were minor victims of federal offenses.

    (c) This statement, a deposition of [redacted] the initial complainant in the state case, taken in the presence of her lawyer, proved that none of the necessary elements for any federal charge could be satisfied based on Ms. [redacted] brief contact with Mr. Epstein. The witness also admitted lying to Mr. Epstein, testifying that she told him that she was an adult and wanted him to believe that she was an adult. *See* Tab 13, [redacted] Tr. (deposition), p. 35 ("Q. So you told Jeff that you were 18 years old, correct? A. Yes."), 37 ("Q. You wanted Mr. Epstein to believe that you really were 18, right? A. Correct.").

    (d) Shortly after this deposition, the defense was able to obtain statements from other women on Mr. [redacted] so called "list of § 2255 victims" and, so far, all such statements also continue to demonstrate that Mr. [redacted] repeated representations to the defense about the existence of federal jurisdiction were false.

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understand that [redacted] was recently reprimanded at a special hearing convened by a United States District Judge in the West Palm Beach Division of the Southern District of Florida, for making misrepresentations during a prior sentencing proceeding.

[3] In fact, Stephanie Thacker, a former deputy to CEOS Chief Drew Oosterbaan, has stated that she knew of no other case like this being prosecuted by CEOS.

12. In August 2007, in a clear attempt to coerce a state settlement, Ms. [redacted] threatened to broaden the investigation to include a money laundering violation (18 U.S.C. § 1956), though all the funds expended were simply Mr. Epstein's, and a violation for operating an unlicensed money-transmitting business (18 U.S.C. § 1960), though Mr. Epstein never had such a business. *See* Tab 22, August 31, 2007 Letter from M. [redacted] to Ross (reciting, in a target letter to one of Epstein's employees, that the investigation concerns "suspected violations of federal law, including but not limited to, possible violations of Title 18, United States Code, Sections . . . ***1591, . . . 1956, 1960*** . . . .") (emphasis added).

13. On the very same day that the grand jury issued subpoenas to the records-custodian and employees of Epstein's businesses for ***all financial transactions*** from 2003 forward, Ms. [redacted] (who we were told was not authorized to act in this regard without supervisory approval) ***promised to close the money-laundering investigation*** "if the sex offense case is resolved." *See* Tab 23, August 16, 2007 Letter from M. [redacted] to G. Lefcourt ("In other words, if the sex offense case is resolved, the Office would close its investigation into other areas as well. The matter has not been, and it does not appear that it will be, resolved so the money laundering investigation continues, and Request Number 6 [seeking records of every financial transaction conducted by Epstein and his six businesses from "January 1, 2003 to the present"] will not be withdrawn.").

14. Two weeks later, when Mr. Epstein continued to oppose federal prosecution during negotiations and Mr. Epstein's counsel sought a meeting with the United States Attorney, AUSA [redacted] then classified all of Mr. Epstein's assistants as targets (sending a target letter to one of them and promising the attorney of the other two that additional target letters would be served on them as well), dispatched FBI agents to the homes of two of his secretaries, and personally telephoned Mr. Epstein's largest business client to advise him of the nature of the investigation. *See* Tab 22, August 31, 2007 Letter from M. [redacted] to A. Ross.

FAUSA [redacted] Forces Mr. Epstein's Lawyers to Convince the State Prosecutors To Impose a More Severe Sentence Than They Believe Is Appropriate

15. Throughout the plea negotiations with the USAO, Mr. [redacted] and Ms. [redacted] continually insisted that the only way they would agree not to bring a federal indictment was if Epstein's lawyers, not the state prosecutors as required under the *Petite Policy*, convinced the state prosecutors to impose a more severe punishment than the state believed was appropriate under the circumstances.

16. FAUSA [redacted] version of the history with respect to the sentence he required Mr. Epstein's lawyers to seek from the State contradicts his later assertion, which is patently false—that *"the SDFL indicated a willingness to defer to the State the length of incarceration"* and *"considered a plea to federal charges that limited Epstein's sentencing exposure . . . "* *See* Tab 1, May 19, 2008 Letter from J. [redacted]. In fact, by a email dated August 3, 2007, Criminal Division Chief Matthew Menchel advised the defense that the federal government required a minimum term of two years of incarceration. See Tab 40, August 3, 2007 Email from M. Menchel. Subsequently, Ms.

[redacted] emailed the defense stating that United States Attorney Acosta would accept no less than 18 months of incarceration, following by a one-year term of house arrest.

Federal Prosecutors Misrepresented the Number of Alleged "Victims."

17. In September 2007, in order to add additional pressure on Mr. Epstein to execute a deferred prosecution agreement, AUSA [redacted] claimed that there were "40" minors on the government's list of purported § 2255 victims. To compound that misleading characterization, she continued to insist that a guardian-ad-litem be appointed to represent these purported "minors" in the proceedings. *See* Tab 24, September 19, 2007 Email from M. [redacted] to J. Lefkowitz.

18. When challenged as to whether there was a genuine need for a ***guardian,*** given that Ms. [redacted] continued to refuse to disclose the names or any other information about her putative list of "minors," she eventually conceded that ***only "1 is definitely under 18*** still, and ***I think*** there is another minor." *See* Tab 25, September 23, 2007 Email from M. [redacted] to J. Lefkowitz (emphasis added).

19. The next day, AUSA [redacted] retreated from the number "40," stating that she had now "compiled a list of ***34 confirmed minor victims with no definition of how they would be considered as such.***. There are six others, whose names we already have, who need to be interviewed by the FBI to confirm whether they were 17 or 18 at the time of their activity with Mr. Epstein." *See* Tab 26, September 24, 2007 Email from M. [redacted] to J. Lefkowitz (emphasis added). This statement indicated that, at least the "six others" (and, as it turns out, all those identified except two) had reached the age of majority, and, in fact, no guardian was necessary to represent their interests.

Defense Counsel was Falsely Advised That the Non Prosecution Agreement Would Be Kept Confidential.

20. On September 24, Epstein and the USAO executed a Non Prosecution Agreement.

21. His attorneys asked Ms. [redacted] to "please do whatever you can to keep this from becoming public." *See* Tab 27, September 24, 2007 Email from J. Lefkowitz to M. [redacted].

22. Ms. [redacted] replied that she had "forwarded your message **only to** Alex [Acosta], Andy [Lourie], and Rolando [Garcia]. I don't anticipate it going any further than that." *Id.*

23. Ms. [redacted] stated that the agreement would be "placed in the case file, which will be kept confidential since it also contains identifying information about the girls." *Id.*

The Prosecution Immediately Notifies Three Plaintiffs That Mr. Epstein Has Executed A Non Prosecution Agreement

24. In direct violation of these representations, "shortly after the signing," the government notified "three victims" of the "general terms" of the Non Prosecution Agreement. *See*

Tab 18, December 13, 2007 Letter from M. [redacted] (admitting that the notification occurred "shortly after the signing").

AUSA [redacted] Misleads Mr. Epstein In An Attempt To Refer Plaintiffs to Her Boyfriend's Close Friend

25. On September 25, Ms. [redacted] recommended a local products-liability defense attorney, Humberto "Bert" Ocariz, Esq., for the highly lucrative post of attorney representative for the government's list of as-yet-undisclosed "victims."[4]

(a) Ms. [redacted] wrote to the defense, "I have never met Bert, but ***a good friend in our appellate section*** and one of the district judges in Miami are good friends with him and recommended him." *See* Tab 28, September 25, 2007 Email from M. [redacted] to J. Lefkowitz (bottom email) (emphasis added).

(b) Ms. [redacted] failed to disclose that this "***good friend*** in our appellate section" was her ***live-in boyfriend***. *See* Tab 18, December 13, 2007 Letter from M. [redacted] (conceding the "relationship" with "my boyfriend").

(c) Beyond her clear conflict-of-interest and affirmative effort to conceal it, it is unimaginable that AUSA [redacted] would have engaged in an *ex-parte* communication with a United States District Judge in the same district about the details of a pending grand-jury investigation without prior disclosure and supervisory approval.

(d) Later, it became clear that Ms. [redacted] also had at least one other *ex-parte* communication with that same United States District Judge about the grand jury's investigation. *See* Tab 29, October 5, 2007 Email from M. [redacted] to J. Lefkowitz (stating that "one of the District Judges in Miami mentioned [retired Judge Joseph Hatchett] as a good choice" to decide any fee disputes concerning Epstein's paying for a lawyer to represent the unnamed women in claims against Epstein).

26. The next day, AUSA [redacted] advised the defense that she was removing one of the alternatives to Mr. Ocariz from our consideration, on the basis that "one of his partners is married to an AUSA here," and explained that, because of that personal relationship,

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[4] These actions were improper. As you know, the Department prohibits employees from using any nonpublic information to secure private benefits of any kind: "An employee ***shall not … allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.***" 5 C.F.R. § 2635.703 (emphasis added). Among the examples of prohibited disclosure specifically illustrated by this regulation is the disclosure of nonpublic information to "friends" to further their financial interests, *id.*, at Example 1, and the disclosure of nonpublic information to a newspaper reporter, *id.*, at Example 5 (see allegations below regarding the leak to the *New York Times*). Furthermore, the Justice Department prohibits its employees from using their position to benefit friends or relatives. *See* 5. C.F.R. § 2635.702; *see also* 5. C.F.R. § 2535.502.

"[t]here is too great a chance of an appearance of impropriety." *See* Tab 28, September 26, 2007 Email from M. [redacted] to J. Lefkowitz.

27. The following day, Ms. [redacted] relayed that, and asked us to respond to, the very first concern raised Mr. Ocariz, which was "how are they going to get paid" and whether "there is any cap or other limitation on attorney's fees that [Epstein] will pay in the civil case." *See* Tab 30, September 27, 2007 Email from M. [redacted] to J. Lefkowitz.

28. Ms. [redacted] clearly contemplated that Mr. Epstein would be paying for Mr. Ocariz at his "hourly rate" to represent the alleged "victims" against Epstein even "if all [the] girls decide they want to sue." *Id.*

29. When the defense complained of Ms. [redacted] undisclosed conflict-of-interest in selecting her boyfriend's friend to prosecute civil claims against Mr. Epstein on behalf of her undisclosed list of purported "victims," Ms. [redacted] later argued that Mr. Epstein had no right to complain because "the Non-Prosecution Agreement vested the Office with the exclusive right to select the attorney representative." *See* Tab 18, December 13, 2007 Letter from M. [redacted]. Shortly after being notified, however, United States Attorney Acosta removed Mr. Ocariz from consideration, and requested an amendment to the Non Prosecution Agreement.

30. In response to the many complaints about Ms. [redacted] misconduct and violations of the United States Attorney's Manual, Criminal Division Chief Matthew Menchel characterized her as "unsupervisable."

31. Contrary to the express agreement of United States Attorney Acosta that the federal government would not interfere in the administration of any state sentence, FAUSA [redacted] continued to try to deny the right of the State to issue work release and/or gain time by stating that Mr. Epstein must "make a binding recommendation that the Court impose" a sentence of 18 months of continuous confinement in the county jail. *See* Tab 21, September 24, 2007 Non Prosecution Agreement. Shortly thereafter, Mr. [redacted] sent the FBI to meet with the state sex-crimes prosecutor in an attempt to secure her commitment to oppose a work release option.

FAUSA [redacted] Attempts to Thwart Discovery

32. On October 31, Mr. [redacted] emailed Mr. Epstein's counsel, confirming that "I understand that the plea and sentence will occur on or before the ***January*** 4th [2008] date." *See* Tab 41, October 31, 2007 Email from J. [redacted] to J. Lefkowitz (emphasis added).

33. On November 5, despite Mr. [redacted] having sent that email just one week before, after learning that the defense had begun to question women on their "list," Mr. [redacted] wrote Mr. Epstein's attorneys demanding that his plea and sentencing in the State case now ***be moved up to November*** 2007. *See* Tab 2, November 5, 2007 Letter from J. [redacted].

34. Mr. [redacted] further demanded in the letter that Mr. Epstein's attorneys "confirm that there will be no further efforts to contact any victims" until the victims are represented by counsel. *Id.* As the women were all adults, there could be no lawful justification for Mr.

[redacted] demand, other than to protect prospective plaintiffs from being interviewed prior to their retaining an attorney (including, as it turned out, Mr. [redacted] former law partner) to bring civil lawsuits against Epstein.

35. Mr. [redacted] also demanded that Epstein "begin his term of incarceration not later than January 4, 2008," *id.*, which turned out to be just three weeks before the first civil lawsuit would be filed against Epstein.

36. Contrary to the express agreement of United States Attorney Acosta that the federal government would not interfere in the administration of any state sentence, Mr. [redacted] tried to limit gain time and or work release by stating that Mr. Epstein must "make a binding recommendation that the Court impose a sentence of 18 months of continuous confinement in the county jail." *Id.* (This followed Mr. [redacted] position that the Office would consider a state sentence ordering probation in lieu of incarceration to be a breach of the deferred-prosecution agreement.) Shortly thereafter, Mr. [redacted] sent the FBI to meet with the state sex-crimes prosecutor in an attempt to secure her commitment to oppose work release.

37. Mr. [redacted] insisted that Mr. Epstein not learn the identities of the government's list of alleged "victims" *until after Epstein was sentenced and incarcerated.*

38. We have reason to believe that, around this same time, Mr. [redacted] former law partner, Jeffrey Herman, had met with the father of one of the prospective plaintiffs, Saige Gonzalez.[5] At the same time (and until as recently as March of 2008), the Official Florida Bar website continued to identify Mr. [redacted] as a named partner in Mr. Herman's firm. *See* Tab 31, Florida Bar Website page.

39. Mr. Herman, who is the named partner in the former firm of Herman, [redacted], & Mermelstein, filed five lawsuits, each asking for $50 million, against Mr. Epstein. Each lawsuit is entitled "*Jane Doe #_ vs. Jeffrey Epstein*," despite the fact that each of the plaintiffs is an adult and not entitled to plead anonymously. *See* Tab 32, Examples of Federal Complaints.

40. Mr. Herman convened press conferences contemporaneously with filing three of the suits. In the most recent press conference, he admitted that all of the plaintiffs lied to Epstein about their ages. *See* Tab 33, Herman Public Statement. One of the supposedly traumatized "victims" actually pled in her complaint that she returned to Epstein's house "on many occasions for approximately three years." Another of these supposedly traumatized "victims" herself acted to introduce her friends and acquaintances to Mr.

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[5] The Justice Department rules disqualify employees from working on matters in which their former employers have an interest: "***an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service.*** The two-year period of disqualification begins to run on the date that the extraordinary payment is received." 5 C.F.R. § 2635.503(a) (emphasis added).

Epstein. All of these plaintiffs are apparently on the above-described government "victim" list.

FAUSA [redacted] Attempts to Encourage Civil Suits and the Hiring of the Government's Choice of Attorney

41. On November 27, Mr. [redacted] sent an email to Mr. Epstein's attorneys stating that "I intend to notify the victims by letter after COB Thursday [two days later]." *See* Tab 34, November 27, 2007 Email from J. [redacted] to J. Lefkowitz.

42. The morning of November 28, attorneys for Mr. Epstein faxed a letter to Assistant Attorney General Alice Fisher, requesting a meeting with her to discuss the impropriety of the USAO's encouraging civil lawsuits against Mr. Epstein under the guise of the terms of the Non Prosecution Agreement. *See* Tab 35, November 28, 2007 Letter from K. Starr to A. Fisher.

43. Late in the day on November 28, Epstein's attorneys received from AUSA [redacted] a copy of the USAO's proposed victim-notification letter that "*Jeff [redacted]* asked that I forward." *See* Tab 36, November 28, 2007 Email from M. [redacted] to J. Lefkowitz.

(a) The proposed victim-notification letter cited as authority the "Justice for All Act of 2004" (which U.S. Attorney Acosta later agreed had no application to these circumstances). It referred to the addressees as minor "victims," suggested they make statements in state court, that they were not entitled to make, and referred incorrectly to Mr. Epstein as a "sexual predator." *Id.*

(b) FAUSA [redacted] also proposed advising recipients, in an underlined sentence that, "You have the absolute right to select your own attorney" to "assist you in making . . . a claim" for "damages from [Epstein]." But that "[i]f you do decide to use [two attorneys selected by the U.S. Attorney's "special master"] as your attorneys, Mr. Epstein will be responsible for paying attorney's fees incurred during the time spent trying to negotiate a settlement." *Id.*

The USAO Leaks Confidential Information to the *New York Times*

44. Perhaps most troubling of all, the USAO has repeatedly leaked information about this case to the media—including to Landon Thomas, the senior business correspondent for the *New York Times*. We have personally reviewed Mr. Thomas's own notes, and they are remarkably detailed about highly confidential aspects of the prosecution's theory of the case and the plea negotiations.

45. Mr. Thomas's calls to the USAO initially were referred to Assistant United States Attorney David Weinstein. AUSA Weinstein informed Mr. Thomas that federal authorities were considering charging Mr. Epstein under 18 U.S.C. §§ 1591, 2422 and 2423, and told the reporter that Mr. Epstein had both lured girls over the telephone and traveled in interstate commerce for the purpose of engaging in sex with minors. AUSA Weinstein also divulged the terms and conditions of the USAO's negotiations with Mr. Epstein—including the fact that Mr. Epstein had proposed "house arrest" with extra

stringent conditions—which Mr. Weinstein could only have learned from FAUSA [redacted], AUSA [redacted] or United States Attorney Acosta himself.

46. AUSA Weinstein then asked why Mr. Epstein should ... be treated differently than anyone else. Mr. Thomas apparently stated that he understood that there was evidence that the women had lied about their ages. AUSA Weinstein replied that this was not a defense and that Mr. Thomas should not believe "the spin" of Mr. Epstein's "high-priced attorneys." Indeed, Mr. Weinstein told Mr. Thomas that the USAO was very concerned about a Palm Beach editorial that questioned whether Mr. Epstein would receive a rich man's justice. AUSA Weinstein then stated that, in fact, Mr. Epstein "doesn't have a defense."

47. Mr. Epstein's attorneys learned of the call and complained to the USAO. Counsel for Mr. Epstein then had an in-person meeting with FAUSA [redacted] and United States Attorney Acosta describing these leaks to the *New York Times*. During Mr. Thomas' next call to the USAO, made two weeks later, AUSA Weinstein "admonished" him (in the words of Mr. Thomas) for disclosing the contents of their prior conversation to the defense, and strongly "reminded" Mr. Thomas that AUSA Weinstein's prior comments about Mr. Epstein had only been "hypothetical" in nature. That claim is sheer nonsense: AUSA Weinstein had disclosed specific details of Mr. Epstein's case, including plea terms proposed by the defense, as revealed based on Mr. Thomas's own contemporaneous hand-written notes.

48. Shortly thereafter, Mr. [redacted] wrote to the defense that Mr. Thomas was given, pursuant to his request, ***non-case specific information*** concerning ***specific*** federal statutes." *See* Tab 37, February 27, 2008 Email from J. [redacted]. Again, that claim was utterly false; Mr. Thomas's contemporaneous hand-written notes, reviewed by Jay Lefkowitz, confirm that the USAO had violated settled Department policy and ethical rules by providing case-specific information about the Department's legal theories and plea negotiations.

Conclusion

We bring these difficult and delicate matters of misconduct to your attention not to require any disciplinary action or review by the Office of Professional Responsibility. Although we have been told that some of this misconduct has been self-reported (only after we raised these complaints in writing), we feel confident that not all the facts were adequately presented. Rather, we believe that they are highly relevant to your decision whether to authorize a federal prosecution in this case. This pattern of overzealous prosecutorial activity strongly suggests improper motives in targeting Jeffrey Epstein, not because of his actions (which are more appropriately the subject of state prosecution), but, rather, because of who he is and who he knows. We also bring this pervasive pattern of misconduct to your attention because we believe it taints any ongoing federal prosecution. The misconduct pervades the evidence in this case. The offers of financial inducement to witnesses, improperly encouraged by the government, make their potential testimony suspect. The reliance on tainted evidence gathered by the state will require a careful sorting out of poisonous fruits.

Most important, however, is that the extraordinary nature of this misconduct, so unusual in ordinary federal prosecutions, raises the gravest of concerns about why prosecutors would go to such lengths in a case already being prosecuted by the State and with so little, if any, federal concern. Accordingly, we ask you to conduct your own investigation of these matters, because we believe that what we have provided you may constitute only the tip of a very deep iceberg. Without the power of subpoena, which we currently lack, we are unable to dig deeper. We strongly believe that there is far more exculpatory evidence that has not been disclosed, more leaks that we have not yet uncovered and more questionable behavior. This is a case that cries out for a deeper investigation than we are capable of conducting, before any decision to prosecute is permitted.

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June 19, 2008

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Dear Mr. Roth:

I again want to thank you for this opportunity to explain why we believe that a federal prosecution of Jeffrey Epstein is unwarranted. I appreciate your having informed us that you already have our May 19 and May 27 communications to the Deputy Attorney General, as well as our prior written submissions to CEOS and to the Southern District of Florida.

In light of the significant volume of our prior submissions and to facilitate your review, we have drafted four supplemental submissions that will provide a roadmap for your investigation of this matter. Given the bulk of these documents and their appended supporting attachments, you will receive this packet by messenger tomorrow. A brief description of each of the four submissions follows. First, I have included a succinct summary of the facts, law and policy issues at hand. This document sets forth a basic overview of the issues and summarizes our principal contentions as to why federal prosecution of this matter is neither appropriate nor warranted.

The three other submissions include: a summary of the irregularities and misconduct that occurred during the federal investigation; a letter from former CEOS attorney Stephanie Thacker that responds to CEOS's assessment of its limited review of Mr. Epstein's case; and a point-by-point rebuttal to First Assistant United States Attorney Jeffrey [redacted] recent letter which we believe contains factual inaccuracies typical of our correspondence from the United States Attorney's Office in Miami (the "USAO"). Also, for your reference, the package you receive tomorrow will contain a binder including all documentation to which we refer in our submissions. Finally, we will be providing a detailed checklist of each submission or substantive communication to the USAO. Our intention is that you have copies of each such document to enhance your review. If there are any that you have not received from the USAO or CEOS, please advise and we will fedex them to you without delay.

As you are likely aware, the Department's prior review of this matter was incomplete and, by its own admission, not "de novo." *See* Tab 38, May 15, 2008 Letter from A. Oosterbaan. Without considering the Non Prosecution Agreement that left this matter to be resolved in the State or any of the misconduct, CEOS reviewers, tasked with reviewing some of their own previously expressed opinions, assessed only whether the United States Attorney would "abuse [his] discretion" if he pursued this case. While we appreciate CEOS's willingness to examine these limited issues, its conclusion that a prosecution would not be an "abuse of discretion" rings particularly hollow in light of CEOS's admirably candid concessions that we have raised "compelling" objections *and* that a prosecution on these facts would require "novel" applications of federal law. Indeed, even a brief review of CEOS's own mission statement reveals how inapposite a federal prosecution is to the facts in this case.

Importantly, we note that the CEOS review was conducted prior to the Supreme Court's very recent decisions in *Santos* and *Cuellar*, which we believe—illuminating as they do the Court's interpretive methodology when it comes to federal criminal law—powerfully demonstrate the substantive vulnerability of the USAO's unprecedented employment of three federal laws. That Office's interpretation would never pass muster under the Supreme Court's recent pronouncements and should not be countenanced. That is all the more true under the circumstances where the duly appointed U.S. Attorney opined that, in effect, the "unitary" Executive Branch was driving this prosecution. We now know that is not so.

What I respectfully request, and what I hope you will provide, is a truly "de novo" review—that is, an independent assessment of whether federal prosecution of Mr. Epstein is both necessary and warranted in view of the legal and evidentiary hurdles that have been identified, the existence of a State felony plea and sentence that have been advocated by the State Attorney for Palm Beach County, and the many issues of prosecutorial misconduct and overzealousness that have permeated the investigation. I also request that you provide us with the opportunity during your review to meet with you in person to answer any questions you may have and to elucidate some of the issues in our submission.

We believe that an independent review will confirm our strong belief that federal prosecutors would be required to stretch the plain meaning of each element of the enumerated statutes, and then to combine these distorted elements in a tenuous chain, in order to convict Mr. Epstein. Indeed, just this week (and after two years of federal involvement in this matter), Assistant United States Attorney [redacted] re-initiated the federal grand jury investigation—in direct contravention of the parties' Non Prosecution Agreement—and issued yet another subpoena seeking evidence in this case. *See* Tab 19, Subpoena to Marina [redacted]. In the subpoena, AUSA [redacted] directs Marina [redacted] to appear on July 1, 2008 to give testimony and produce documents to FGJ 07-103 West Palm Beach. The attachment to the subpoena seeks documents such as photographs, emails, telephone billing information, and contact information that relate to Mr. Epstein as well as specific other people who received protection from federal

prosecution as a result of Mr. Epstein's having entered into the September 24, 2007 Non Prosecution Agreement with the USAO.

Notably, the Non Prosecution Agreement contains the following agreed condition:

> Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, *the federal Grand Jury investigation will be suspended*, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas.

See Tab 21, September 24, 2007 Non Prosecution Agreement. It also guarantees that persons identified in the Grand Jury subpoena such as Sarah [redacted], [redacted], and Leslie Groff and others will not be prosecuted. The new Grand Jury subpoena clearly violates the Non-Prosecution Agreement. Although Mr. Epstein has exercised his rights to appeal to the Department of Justice with the full consent and knowledge of the USAO, he has not breached the Agreement. The re-commencing of the Grand Jury is in violation of the Agreement.

But further, the new investigation, which features a wide-ranging, fishing-expedition type to search in New York does nothing to satisfy the very essential elements of federal statutes that are lacking despite the intensity of an over two-year investigation in the Palm Beach area. Absent evidence of Internet luring, inducements while using the phone, travel for the purpose, fraud or coercion, the subject of the New York investigation is as lacking in the essential basis for converting a state case into a federal case as is the remainder of the Florida investigation.

The reaching out to New York to fill the void emanating from the failures of the Florida investigation compellingly demonstrates the misuse of federal resources in an overzealous, over-personalized, selective and extraordinary attempt to expand federal law to where it is has never gone. This last-ditch attempt by Ms. [redacted] reinforces our belief that the USAO does not have facts that, without distortion, would justify a prosecution of Mr. Epstein.

In view of the prosecution's often-verbalized desire to punish Mr. Epstein, we believe that the prosecution summary suffers from critical inaccuracies and aggregates the expected testimony of witnesses so as to reach a conclusion of guilt. Our contention is reinforced by the fact that key prosecution witnesses have provided evidence and testimony that directly undermines the prosecution's misleading and inaccurate summary of its case. Indeed, we now have received statements from three of the principal accusers—[redacted] (through a state criminal deposition), [redacted] (through a federal FBI-USAO sworn and transcribed interview), and [redacted] (through a defense—generated sworn transcribed interview). Each of these witnesses categorically denies each essential element that the prosecution will have to prove in order to convert this quintessential state-law case into a federal matter.

It thus is especially troubling that the USAO has not provided us with the transcript of Ms. Miller's federal interview, nor the substance of the interviews with Ms. [redacted] or Ms. [redacted] nor any information generated by interviews with any of the approximately 40 alleged witnesses that the prosecution claims it has identified. Because the information provided by these women goes directly to the question of Mr. Epstein's guilt or innocence, it is classic *Brady* information. We understand that the U.S. Attorney might not want to disclose impeachment information about their witnesses prior to a charge or during plea negotiations. But we firmly believe that when the Government possesses information that goes directly to a target's factual guilt or innocence, the target should be informed about such heartland exculpatory evidence.

Most importantly, aside from whether the Department believes *Brady* obligates disclosure to a target of a federal investigation prior to the target's formal accusation, no such limit should apply to a Department review. Accordingly, we request that you go beneath the face of any summary provided to you by the USAO and instead review the actual witness transcripts and FBI 302s, which are essential for you to be able to make a truly independent assessment of the strength and wisdom of any federal prosecution.

After careful consideration of the record, and as much as it pains me to say this, I simply do not believe federal prosecutors would have been involved at all in this matter if not for Mr. Epstein's personal wealth and publicly-reported ties to former President Bill Clinton. A simple Internet search on Mr. Epstein reveals myriad articles and news stories about the former President's personal relationship with Mr. Epstein, including multi-page stories in *New York Magazine* and *Vanity Fair*. Mr. Epstein, in fact, only came to the public's attention a few years ago when he and the former President traveled for a week to Africa (using Mr. Epstein's airplane)—a trip that received a great deal of press coverage. I cannot imagine that the USAO ever would have contemplated a prosecution in this case if Mr. Epstein lacked this type of notoriety.

That belief has been reinforced by the significant prosecutorial impropriety and misconduct throughout the course of this matter. While we describe the majority of these irregularities in another submission, two instances are particularly troubling. First, the USAO authorized the public disclosure of specific details of the open investigation to the *New York Times*—including descriptions of the prosecution's theory of the case and specific terms of a plea negotiation between the parties. Second, AUSA [redacted] attempted to enrich friends and close acquaintances by bringing them business in connection with this matter. Specifically, she attempted to appoint a close personal friend of her live-in boyfriend to serve as an attorney-representative for the women involved in this case.

It also bears mentioning that actions taken by FAUSA [redacted] present an appearance of impropriety that gives us cause for concern. Mr. [redacted] former law partner is currently pursuing a handful of $50-million lawsuits against Mr. Epstein by some of the masseuses.

Finally, as you know, Mr. Epstein and the USAO entered into an agreement that deferred prosecution to the State. In this regard, I simply note that the manner in which this agreement was negotiated contrasts sharply with Mr. [redacted] current representation that *"[T]he SDFL indicated a willingness to defer to the State the length of incarceration . . . "* *See* Tab 1, May 19, 2008 Letter from J. [redacted], p. 2. This statement is simply not true. Contrary to Mr. [redacted] assertion, federal prosecutors refused to accept what the State believed to be appropriate as to Mr. Epstein's sentence and instead, insisted that Mr. Epstein be required serve a two-year term of imprisonment (which they later decreased to 18 months plus one year of house arrest). Federal prosecutors have not only involved themselves in what is quintessentially a state matter, but their actions have caused a critical appearance of impropriety that raises doubt as to their motivation for investigating and prosecuting Mr. Epstein in the first place.

At bottom, we appreciate your willingness to review this matter with a fresh—and independent—set of eyes. To facilitate your review, I once again request the opportunity to make an oral presentation to supplement our written submissions, and we will promptly respond to any inquiries you may have.

Yours sincerely,

Kenneth W. Starr

Kenneth W. Starr

cc: Deputy Attorney General Mark Filip

SUBMISSION TO THE OFFICE OF THE DEPUTY ATTORNEY GENERAL

IN THE MATTER OF JEFFREY E. EPSTEIN

Jeffrey Epstein, a successful businessman and noted philanthropist with no prior criminal record, has been investigated for potential violations of 18 U.S.C. §§ 1591, 2422(b) and 2423(b). Since the limited review conducted by CEOS, two Supreme Court decisions—one authored by Justice Scalia and the other by Justice Thomas—have revitalized the bedrock principles that federal criminal statutes must be narrowly construed, that they may not be stretched to federalize conduct not clearly covered by their prohibitions, and that whenever there are two plausible constructions of a criminal statute, the narrower construction (hich safeguards liberty) rather than the broader construction (which expands the federal prosecutor's arsenal) controls under the venerable rule of lenity.

Mr. Epstein's conduct—including his misconduct—falls within the heartland of historic state police and prosecutorial powers. Absent a significant federal nexus, matters involving prostitution have always been treated as state-law crimes even when they involve minors. Mr. Epstein's conduct lacks ***any*** of the hallmarks that would convert this quintessential state crime into a federal one under any of the statutes prosecutors are considering.

Mr. Epstein lived in Palm Beach, and his interstate travel was merely to go home. Any sexual conduct that occurred after he arrived was incidental to the purposes for his travel. Even CEOS admitted that applying § 2423(b) to a citizen traveling home would be "novel." In fact, it would be both unprecedented and in conflict with Supreme Court cases that have withstood the test of time for over 60 years.

Moreover, Mr. Epstein did not use the internet (either via email or chatrooms) to communicate with any of the witnesses in this investigation. Indeed, he did not use any other facility of interstate commerce, including the phone, to knowingly persuade, entice, or induce anyone to visit his home—the "local" locus of all the incidents under investigation—much less to persuade, entice, or induce a known minor to engage in prohibited sex acts, as § 2422(b) requires. Nor did anyone on his behalf "persuade" or "induce" or "entice" or "coerce" anyone as these words are ordinarily understood and as the new Supreme Court decisions mandate they be applied: narrowly, without stretching ordinary usage to conform to a prosecutor's case-specific need for a broad (and in this case unprecedented) application. In addition, as will be shown below, § 2422(b) requires that the object of the communication be a state law offense that "can be charged." Yet because the state of Florida's statute of limitations is one year for the first prostitution offense and three years for other targeted offenses, and because all or virtually all of the offense conduct at issue in the federal investigation occurred prior to June 20, 2005, those acts can ***not*** be charged by the State, and thus cannot meet this essential element of federal law.

Finally, Mr. Epstein neither coerced, nor enslaved, nor trafficked, nor derived any profit from his sexual conduct. He was an ordinary "John," not a pimp. But § 1591 is directed only against those who engage in force or fraud or coercion or who are in the business of commercial

sexual trafficking. The statute has never been applied to a "John," and only a highly and impermissibly selective prosecution could stretch § 1591 to reach conduct like that at issue in this case.

In short, without "novel" interpretive expansions—a description used by CEOS itself—it cannot be shown that Mr. Epstein violated any of the three federal statutes identified by prosecutors. As the Supreme Court's recent decisions in *Santos* and *Cuellar* make clear, federal law may not be stretched in that manner, and the current federal investigation relies, as its foundation, on impermissibly elastic stretches of each statute beyond any reported precedent; beyond the essential elements of each statute; well outside the ordinary construction of each statute's limitations; and on a selective, extraordinary, and unwarranted expansion of federal law to cover conduct that has always been exclusively within the core of state powers.

At this point in time, the need for Departmental oversight is critical. We appreciate this opportunity to submit our assessment of the key facts in this case and review of the pertinent federal statutes, and respectfully request that the Office of the Deputy Attorney General end federal involvement in this matter so that the State of Florida may resolve this case appropriately.

Summary of the Facts

Mr. Epstein has maintained a home in Palm Beach, Florida for the past 20 years. While there, he routinely conducted business, received medical attention, socialized with friends, and helped care for his elderly mother. Mr. Epstein also had various women visit his home to perform massages. He did not personally schedule the massage appointments or communicate with the women over the phone or the Internet. Rather, Mr. Epstein's personal assistants scheduled many types of appointments, personal trainers, chiropractors, business meetings and massages. The phone message pad taken from his house and in the possession of the government confirmed that in many cases, the women themselves contacted Mr. Epstein's assistants to inquire about *his* availability—rather than vice versa.

The majority of the massages were just that and nothing else. Mr. Epstein often would be on the telephone conducting business while he received his massage. At times, the masseuses would be topless, and some sexual activity might occur—primarily self-masturbation on the part of Mr. Epstein. On other occasions, no sexual activity would occur at all. There was no pattern or practice regarding which masseuse would be scheduled on a particular day—if one would be scheduled at all—or whether any sexual activity might occur. Indeed, Mr. Epstein almost never knew which masseuse his assistants had scheduled until she arrived. *See* Tab 3, [redacted] Toll Records.

Mr. Epstein specifically requested that each masseuse be at least 18 years old. The vast majority of the masseuses were in fact in their twenties, many accompanied to Mr. Epstein's home by friends or even other family members. Furthermore, most of the women who have testified that they were actually under 18 have specifically admitted to systematically lying to Mr. Epstein about their age. *See* Tab 4 [redacted] Tr. at 38-39; Tab 5, [redacted] Tr. at 16; Tab 6,

Miller Tr. at 6, 8, 22, 45; Tab 7, [redacted] Tr. 13; Tab 8 [redacted] Tr. at 8; Tab 9, [redacted] Tr. at 5; and Tab 10, [redacted] Tr. at 14-15 (excerpts from these transcripts are included below). Furthermore, the women who visited Mr. Epstein's home all visited voluntarily and many willingly returned several times.

The State Attorney's Office (the "SAO") has vast experience prosecuting sex crimes and conducted an exhaustive, 15-month investigation of Mr. Epstein. A Grand Jury has concluded that Mr. Epstein was merely a local "John," guilty of soliciting prostitution in violation of state law. Notably, Florida law distinguishes soliciting from procuring and compelling prostitution if minors are involved. Indeed, soliciting is a misdemeanor except for the commission of a third subsequent offense, turning it into a felony. The SAO, therefore, sought and obtained an indictment charging Mr. Epstein with felony solicitation of prostitution. Mr. Epstein is prepared to plead guilty and accept a sentence for that offense—a sentence that, notably, is far more severe than that meted out to other "Johns" convicted of violating Florida's solicitation laws for cases in which sexual activity was alleged.

Though CEOS points out its admirable goal of "protecting children," a moniker that engenders high emotions, the conduct alleged here involves women over 16, which is the age of consent in 38 states and supplies the effective federal age of consent. The young women were by no means the target of high-school trolling; they were individuals who, with friends, visited Mr. Epstein's house—a home full of friends and staff. The civil complaints filed against Mr. Epstein reiterate the fact that the individuals who visited Mr. Epstein would visit with their friends. And Mr. Epstein never spoke to or had any contact with these women before they arrived at his house. And again, the State is handling this matter appropriately.

We respectfully submit that that should be the beginning and the end of this matter. As you know, the Department's *Petite* Policy precludes successive federal prosecutions after a State has acted: "[A] state judgment of conviction, plea agreement [here held in abeyance solely as a result of the federal investigation], or acquittal on the merits shall be a ***bar*** to any subsequent federal prosecution for the same act or acts." U.S.A.M. § 9-2.031A (emphasis added). Consistent with that principle, and of particular relevance to this case, the Department itself just recently observed the following:

> [P]rostitution-related offenses have historically been prosecuted at the state or local level. This allocation between state and Federal enforcement authority does not imply that these crimes are less serious, but rather reflects important structural allocations of responsibility between state and Federal governments.... [T]he Department is not aware of any reasons why state and local authorities are not currently able to pursue prostitution-related crimes such that Federal jurisdiction is necessary.

See Tab 11, November 9, 2007 Letter from Justice Department Principal Deputy Assistant Attorney General Brian Benczkowski to the House Committee on the Judiciary, p. 8-9.

Summary of the Law

We have reviewed every reported case under 18 U.S.C. §§ 1591, 2422(b), and 2423(b), and cannot find a single one that resulted in a conviction on facts akin to the ones here. In some respects, it is not surprising that no precedent supports federal prosecution of a man who engaged in consensual conduct, in his home, that amounts to solicitation under State law. After all, prostitution, even when the allegations involve minors, is fundamentally a State concern, *United States v. Evans*, 476 F.3d 1176, n.1 (11th Cir. 2007) (noting that federal law "does not criminalize all acts of prostitution (a vice traditionally governed by state regulation)"), and there is no evidence that Palm Beach County authorities and Florida prosecutors cannot effectively prosecute and punish the conduct. *See also Batchelder v. Gonzalez*, No. 4:07-cv-00330-SPM-AK, 2007 WL 5022105 (N.D. Fla. Oct. 19, 2007). In fact, the opposite is true—the state-elected officials, cognizant of the local mores of the community, have a lauded history of just such prosecutions.

In any event, and as set forth below, none of the federal statutes in this case remotely supports a prosecution on the facts of this case without each and every element being stretched in a novel way to encompass the behavior at issue. We begin with first principles. Courts in this country have "traditionally exercised restraint in assessing the reach of federal criminal statutes, both out of deference to the prerogatives of Congress, *Dowling v. United States*, 473 U.S. 207 (1985), and out of concern that 'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed.'" *Arthur Andersen LLP v. United States*, 544 U.S. 696, 703 (2005) (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931)) (citation omitted).

Two recent Supreme Court decisions dramatically underscore these principles and help to highlight why federal prosecution in this case would be improper as a matter of both law and policy. *See United States v. Santos*, No. 06-1005 (June 2, 2008); *Cuellar v. United States*, No. 06-1456 (June 2, 2008). Though they both address the interpretation and application of the federal money laundering statute, 18 U.S.C. § 1956, the principles they set forth are equally applicable here. In *Santos*, the Court held that the statutory term "proceeds" means "profits" rather than "receipts," and thus gave the statute a significantly narrower interpretation than what the government had urged. In his plurality opinion, Justice Scalia emphasized that where a statutory term in a criminal statute could support either a narrow or broad application, the narrow interpretation must be adopted because "[w]e interpret ambiguous criminal statutes in favor of defendants, not prosecutors." Slip op. at 12. As his opinion explained, the rule of lenity "not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly proscribed. It also places the weight of inertia upon the party that can best induce

Congress to speak more clearly and keeps courts from making criminal law in Congress's stead." Slip op. at 6.[1]

In *Cuellar*, the Court examined the link between the money-laundering statute's *mens rea* requirement and the underlying elements of the offense. After a careful textual analysis of the statute and its structure, the Court ruled that the defendant's conviction could be sustained only if he knew that the *transportation* of funds to Mexico was designed to conceal their nature, location, source, ownership or control—not merely that the defendant knew that the *funds* had been hidden during their transportation to Mexico. Slip op. at 10-17.

Both decisions relied on the ordinary meaning of the statutory terms Congress chose. And both rejected attempts to broaden those words to cover conduct not clearly targeted by Congress. Taken together, these decisions reject the notion that prosecutors can take language from a narrowly drawn federal statute—especially one that itself federalizes the prosecution of conduct traditionally within the heartland of State police powers—and convert it into a license to reach additional conduct by ignoring, rewriting or expansively interpreting the law. Both cases additionally rejected the notion that statutes should be broadly construed in order to facilitate prosecutions or to in anyway diminish the burden on prosecutors to prove each essential element of a federal charge in conformity with Congress's determinations as to what is within the federal criminal law and what is not. The conflict between the *Santos* and *Cuellar* decisions and CEOS's grant of effectively unlimited discretionary authority to the USAO to take federal law to "novel" places where they have never reached before could not be starker.

These lessons have no less force in the context of Executive Branch decision-making than they do in the context of Judicial interpretation. As you are aware, when federal prosecutors exercise their discretion, they bear an independent constitutional obligation to faithfully interpret the law as written—not to broaden its scope beyond the limits endorsed by both Congress and the President. There is no support for CEOS's view that the courts or a jury should ultimately decide whether a "novel" construction of the law is correct. Instead, the Executive Branch itself has a non-delegable obligation not to exceed its authority; the power of other branches to check or remedy such usurpation does not legitimize executive action that exceeds its bounds. *See* Tab 12, November 2, 1994 Memorandum from Assistant Attorney General Walter Dellinger to the Hon. Abner J. Mikva, Counsel To The President, on Presidential Authority To Decline To Execute Unconstitutional Statutes, *available at* http://www.usdoj.gov/olc/nonexcut.htm.

In this case, the text, structure, and history of the relevant federal statutes unambiguously indicate that these statutes were designed to address problems of a national and international

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[1] Justice Stevens, in his concurring opinion, also acknowledged the rule of lenity, calling the plurality opinion's discussion of that rule "surely persuasive." *United States v. Santos*, No. 06-1005, slip op. at 5 (June 2, 2008) (Stevens, J., concurring).

scope—not the local conduct that is alleged here—and each of these statutes requires proof of the defendant's actual knowledge that simply is not present in this case. Any attempt to stretch the language of these statutes to cover this case would be a misuse of the law and contrary to express legislative intent. In short, the elements under each federal statute—18 U.S.C. §§ 1591, 2422(b) and 2423(b)—are not satisfied here.

1. **18 U.S.C. § 2422(b)**

18 U.S.C. § 2422(b) requires the government to prove beyond a reasonable doubt that the defendant engaged in communications over an interstate facility (*e.g.*, the Internet or phone) with four concurrent intentions: (1) to knowingly (2) persuade, induce, entice or coerce, or attempt to persuade, induce, entice, or coerce (3) a minor (4) to engage in prostitution or criminal sexual activity for which the person can be charged. Mr. Epstein's conduct does not satisfy the elements of § 2422(b). Each element must be individually stretched, and then conflated in a tenuous chain to encompass the alleged conduct with any individual woman.

As the statute makes clear, the essence of this crime is the communication itself—not the resulting act. The Court of Appeals for the Eleventh Circuit, in *Murrell,* underscores the point:

> The defendant in *Bailey* contended that attempt under § 2422(b) 'requires the specific intent to commit illegal sexual acts rather than just the intent to persuade or solicit the minor victim to commit sexual acts.' *Id.* at 638. In response, the court held '[w]hile it may be rare for there to be a separation between the intent to persuade and the follow-up intent to perform the act after persuasion, they are two clearly separate and different intents and the Congress has made a clear choice to criminalize persuasion and the attempt to persuade, not the performance of the sexual acts themselves. Hence, a conviction under the statute only requires a finding that the defendant had an intent to persuade or to attempt to persuade.'

United States [redacted] *Murrell* 368 F.3d 1283, 1287 (11th Cir. 2004) (citing *United States* [redacted] *Bailey,* 228 F.3d 637, 638-39 (6th Cir.2000)). Thus, the targeted criminal conduct must occur ***through*** the interstate facility, not thereafter, and the *scienter* element must be present at the time of the call or Internet contact.

In this case, however, Mr. Epstein did not use an interstate facility to communicate any illegal intention in this case; the phone calls were made by his assistants in the course of setting up many other appointments. Neither a conspiracy charge nor a charge of aiding and abetting can fulfill the *mens rea* requirement here. Indeed, neither Mr. Epstein nor his assistants knew whether sexual activity would necessarily result from a scheduled massage. And certainly, no such activity was ever discussed on the phone by either Mr. Epstein or his assistants. Instead, as the record in this case makes clear, many appointments resulted in no illegal sexual activity, and often, as confirmed by the masseuses' own testimony, several individuals who were contacted by phone visited Mr. Epstein's house and did not perform a massage at all. Where sexual activity

did result, it was mainly self-pleasuring masturbation and not necessarily illegal, but spontaneous and resulted from face-to-face conversations during the massage. Thus, the fact that Mr. Epstein ***later*** may have persuaded any particular masseuse to engage in unlawful activity ***during the massage*** does not work retroactively to render the earlier scheduling phone call an offense under § 2422(b). Nor is there any evidence that women who returned to Mr. Epstein's home time and again were somehow coerced or induced over a facility of interstate commerce to do so.

The first essential element of § 2422(b) that "[w]hoever, using the mail or any facility or means of interstate or foreign commerce," by its plain language, requires that the communication, which is the essence of the crime and its *actus reus*, take place during the use of the facility of interstate commerce (in this case, unlike the vast majority of Internet chat room sting operations, a telephone). The statute is not ambiguous. It requires that the criminal conduct occur while the defendant is "using" (i.e. engaged in the communication), not thereafter.

Given the utter lack of direct evidence against Mr. Epstein, prosecutors have signaled that they intend to offer a purely circumstantial case if this matter proceeds to trial—essentially arguing that "routine and habit" evidence could substitute for actual proof that an interstate facility was used to solicit sex from minors. Thus, despite the fact that the calls themselves were not made by Mr. Epstein and did not contain the necessary explicit communication to knowingly induce minors to provide sexual favors for money, prosecutors are seeking to turn the phrase "are you available"—the same phrase used with friends, chiropractors, and trainers—into a ten-year mandatory prison sentence. In any case, the prosecution's attenuated argument regarding "routine and habit" will also not fit the facts of this case. The witness testimony at issue makes clear that there was no clear "routine or habit" with respect to the interactions at issue. And in those unpredictable instances where sexual contact resulted, it was a product of what occurred ***after*** the benign phone communication, not during the call itself.

The prosecution's theory of liability—that a call to a person merely to schedule a visit to the defendant's residence followed by a decision made at the residence to engage in prohibited sexual activity is sufficient—cannot survive either a "plain language" test or the rule of lenity as they have been authoritatively construed in the recent *Santos* and *Cuellar* cases. The statute cannot be read otherwise. As the *Cuellar* decision makes clear, a proper interpretation of a federal criminal statute is guided "by the words of the operative statutory provision," not by outside objectives, such as those facilitating successful prosecution. *See Cuellar, supra,* Slip op. at 7. As Justice Alito stated in his concurring opinion, the government must prove not just the "effect" of the secretive transportation, but also that "petitioner knew that achieving one of these effects was a design (i.e. purpose) of the transportation" of currency. *Cuellar v. United States, supra*, 553 *U.S.*, Slip op. At 1 (Alito, J. concurring). Similarly, it is not enough that one effect of a communication scheduling a visit between Mr. Epstein and a minor was that there might be subsequent face-to-face inducement. Instead, the statute, as drafted, defines the crime as the communication and demands that far more be proven than that the use of an interstate facility resulted in a later meeting where even an inducement (as opposed to a solicitation) was made.

The prosecution has never represented to counsel that they have evidence that would prove that the inducement or enticement to engage in illegal sexual acts occurred over the phone (or Internet). The prosecution's references to "routine and habit" evidence that would substitute for the explicit communications usually found in the transcripts from chat rooms or sting operations is tenuous at best. In essence, the prosecution would be alleging communications understood, but not spoken, by two people, one of whom was usually a secretary or assistant. Separating the *actus reus* and the *mens rea*, however, and premising criminal liability on persuasion that might occur *after* the communication, or on the existence of a specific intent to engage in illegal sex with a minor that arises *after* the communication would violate the bedrock principle of criminal law that predicates liability on the concurrence of the act and the criminal state of mind. Even if, *arguendo*, the communication and *mens rea* could be separated (a premise which is at odds with the requirement of concurrence), Mr. Epstein denies that the factual proof demonstrates such a pattern or practice. Instead, the evidence compellingly proves that there was no regularity or predictability to the content of the communication or in what occurred at meetings that were telephonically scheduled (including those that are the subject of this investigation).

A second essential element of 2422(b) requires that the defendant "knowingly" induce, persuade, entice or coerce a person believed to be a minor. " . . . [K]knowingly . . . induces . . ." requires the Court to define inducement so it is consistent with its ordinary usage and so the term is not so broad that it subsumes the separate statutory terms of "entices" and "persuades." Inducement has a common legal meaning that has been endorsed by the government when it operates to *narrow* the affirmative defense of entrapment. *Inducement* must be more than "mere solicitation;" it must be more than an offer or the providing of an opportunity to engage in prohibited conduct. *See, e.g,. United States v. Sanchez-Berrios,* 424 F.3d 65, 76-77 (1st Cir. 2005); *United States v. Brown,* 43 F.3d 618, 625 (11th Cir. 1995). The government cannot fairly, or consistent with the rule of lenity, advocate a broader definition of the same term when it ***expands*** a citizen's exposure to criminal liability than when it ***limits*** the ambit of an affirmative defense to criminal conduct. If the term is ambiguous, absent clear Congressional intent on the issue, the Court's decision in *Santos* requires that the narrower rather than the broader definition be used.

The facts simply do not prove Mr. Epstein's culpability for knowingly inducing or persuading minors. First, in the case of masseuses who agreed or even sought to return to see Mr. Epstein on successive occasions, there is no evidence that there was any inducement, persuasion, enticement or coercion over the phone. And, for masseuses seeing Mr. Epstein for the first time, there was generally no telephone contact with Mr. Epstein and there was no knowledge that any third party at Mr. Epstein's specific direction was inviting them to Mr. Epstein's home over the phone rather than in face-to-face meetings. The women who visited Mr. Epstein's home were all friends of friends. Contrary to the facts in this case, § 2422(b)'s knowing inducement element is essential to federal liability and, given its hefty minimum mandatory punishment, it should not be interpreted as a strict liability statute.

There is insufficient evidence that Mr. Epstein targeted minors, as required. The evidentiary pattern does not even establish willful blindness since Mr. Epstein took steps to ensure his visitors were over 18—and certainly took none to avoid knowing. But, even if the government contends that it possesses evidence that could demonstrate that Mr. Epstein knew or should have known or suspected that a small number of the masseuses were underage, that would still not make this an appropriate case for federal, rather than state prosecution. The federal statutes were not intended to supersede state prosecutions involving isolated instances of underage sex. Instead, the federal statutes were intended for large-scale rings or for an individual who was engaged, while using interstate facilities such as the Internet, with the willful targeting of minors.

The government's evidence, even when stretched to the limit, will not show a pattern of targeting underage persons for illegal sexual activity. A federal prosecution should not become a contest between the prosecution and defense over whether the defendant knew, suspected or should have known whether a particular person was or was not over age. The history of cases brought under this statute make crystal clear that knowledge of the defendant regarding the age of the women is required—either by admission or by incontrovertible transcripts of conversations (i.e. stings operations which require repeated acknowledgment of the defendant's awareness of the victims' age). Even states with absolute liability about mistake regarding age rarely prosecute cases where definitive proof is lacking (Palm Beach County rarely does and when it does, it imposes house arrest sentences). This is a matter for the exercise of state prosecutorial discretion and not federal mandatory minimum statutes that were not intended to cover such conduct.

A third essential element of § 2422(b) is the requirement that the government prove that the defendant actually believed that the person being persuaded (coerced, etc.) was a minor at the time of the communication. *See e.g.*, Offense Instruction 80, Eleventh Circuit Pattern Jury Instructions-Criminal (2003) ("The defendant can be found guilty of that offense only if...the defendant believed that such individual was less than (18) years of age..."); *United States v. Murrell*, 368 F.3d 1283, 1286 (11th Cir. 2004) (§ 2422(b) requires that the defendant knowingly target a minor). Importantly, then, all the elements must be proven with respect to a specific person. However, we are told that the majority of proof is no more than toll records, not recorded conversations or Internet chat transcripts, but toll records and perhaps a memory of what was said years ago on a particular call for a particular request from a particular person acting at Mr. Epstein's direction.

Two final points bear special emphasis here. The statute, which according to *Santos* and *Cuellar* must be narrowly construed, also requires that the inducement be to engage in prostitution or sexual activity "for which [the defendant] can be charged." 18 U.S.C. § 2422(b). However, simple prostitution is not defined (or made punishable) in the U.S. Code, and state law thus supplies the appropriate reference point. Under Florida law, "prostitution" entails the "giving or receiving of the body for sexual activity for hire," Fla. Stat. § 796.07(1)(a), and the term "sexual activity" is limited to "oral, anal, or vaginal penetration by, or union with, the

sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation." Fla. Stat. § 796.01(1)(d). Also, the Florida Supreme Court jury instructions define prostitution as involving "sexual intercourse." As a result, topless massages—even ones for hire that include *self*-masturbation—fall outside the ambit of the state-law definition of prostitution. Absent proof beyond a reasonable doubt that, at the critical time of the communication, Mr. Epstein had a specific intent to persuade another to engage in prostitution or "sexual activity," *as defined by Florida law,* he cannot be guilty of an offense under § 2422(b).

As important, the plain language of the phrase "for *which any person can be charged*" necessarily excludes acts as to which the state's statute of limitations has run. Under Florida law, prostitution and prostitution-related offenses are misdemeanors in the second degree for a first violation.[2] *See* Fla. Stat.. § 796.07(4)(a). The limitations period for a misdemeanor in the second degree is one year, and there is no tolling provision based upon the victim's age. *See* Fla. Stat. § 775.15(b). Even as to allegations of third degree felonies, the statute of limitations is three years. Thus, any conduct alleged to have occurred before mid-June 2005 cannot be charged as a matter of state law and thus cannot be a predicate for a § 2422(b) offense—even if the federal statute of limitations has not run on any given § 2422(b) offense because of the lengthier statute codified in 18 U.S.C. § 3282. Thus, no prosecution under § 2422(b) can be brought based upon inducement of prostitution or sexual activity for which Florida's statute of limitation has run. Furthermore, in Florida, the statute of limitations does not simply give rise to an affirmative defense. On the contrary, statute of limitations "creates a substantive right which prevents prosecution and conviction of an individual after the statute has run." *See State* [redacted] *King*, 282 So. 2d 162 (Fla. 1973); *Tucker* [redacted] *State*, 417 So. 2d 1006 (Fla. 3d D.C.A. 1982) (citing cases).

Given the one-year statute of limitations, any conduct that might amount to prostitution or other chargeable sexual activity that occurred before one year from today is not conduct for which any person can be charged with a criminal offense. Also, given the three year statute of limitations for third degree felonies, any allegations of illegal state criminal conduct that is classified as a third degree felony cannot be charged in the state and, concomitantly, cannot be the basis for a federal charge under § 2422(b), to the extent that it occurred—as did almost all of the pivotal allegations (e.g., the [redacted] allegation which was made in March of 2005) prior to mid-June of 2005.

2. 18 U.S.C. § 1591

[2] The offense is a felony of the third degree only for a third or subsequent violation. Fla. Stat. § 796.07(4)(c).

18 U.S.C. § 1591, a sex trafficking statute, provides up to 40 years' imprisonment for anyone (1) who recruits or obtains by any means a person in interstate commerce (ii) knowing that the person is under 18 and (iii) knowing that the person will be caused to engage in a commercial sex act. The most heinous of crimes, described on the CEOS website, fall within this statute and include the buying and selling of children and the forced servitude of third-world immigrants brought to this country to be enslaved. Mr. Epstein's behavior is nowhere near the heartland of this statute. This statute has also been previously reserved for prostitution rings involving violence, drugs and force. In stark contrast, there is no jurisdictional hook that brings Mr. Epstein's conduct within the ambit of the statute, and securing a prosecution on these facts would require a court to set aside both reason and precedent to convict a local 'John' with a sex-slavery crime. It can not be said that Mr. Epstein engaged in trafficking and slavery nor did he knowingly recruit or obtain underage women with knowledge that they would be caused to engage in a commercial sex act. Thus, prosecuting him under this statute would expand the law far beyond its scope.

To the extent there are cases where prosecutors think that Mr. Epstein should have known that certain women were underage, there is no evidence that Mr. Epstein "*caused* [them] to engage in a commercial sex act." The term "cause" naturally implies the application of some sort of force, coercion, or undue pressure, but there is no evidence that Mr. Epstein's interactions with the women were anything but consensual. Again, many of the women phoned Mr. Epstein's assistant themselves in order to determine whether ***he*** wanted a massage. Nor can the cause requirement be proved simply by the fact that Mr. Epstein compensated the women. After all, the statute ***elsewhere*** requires that the women "engage in a commercial sex act," which by definition means that they would have received something of value in exchange for sexual services. Interpreting the statute to authorize prosecution whenever a commercial sex act results from solicitation thus would render the term "caused" superfluous, and would make every 'John' who interacts with an underage prostitute guilty of a federal crime—even where the transaction is entirely local. Read in context, then, there is no doubt that the statute targets pimps and sex-traffickers who knowingly obtain underage girls and direct them to engage in prostitution. There is not a shred of evidence that Mr. Epstein (or his assistants) did any such thing, and he cannot be prosecuted under this statute.

The *Cuellar* and *Santos* decisions also foreclose a prosecution under § 1591. Just as the federal money laundering statute did not come down to a proscription against transportation of criminal proceeds that are hidden, the sex trafficking of children statute cannot be boiled down and expanded to a federal proscription of commercial sexual activity with persons who turn out to be below the age of 18.

3. **18 U.S.C. § 2423**

18 U.S.C. § 2423(b), a statute enacted to prevent sex tourism, provides up to 30 years of imprisonment for anyone who travels across state lines (i) for the purpose of engaging in (ii) illicit sexual conduct with a minor. Neither of those elements is satisfied here.

Mr. Epstein did not travel to Palm Beach ***for the purpose of*** engaging in sexual activity with a minor, within the meaning of the statute. The evidence is indisputable that Palm Beach was where Mr. Epstein spent most of his discretionary time, and that his travels to Palm Beach were merely trips returning often to his home of twenty years—not the escapades of a sex tourist off to some destination inextricably intertwined with the required significant or dominant purpose of that trip to be to have "illicit sexual conduct." Epstein's trips to Palm Beach were simply those of a businessperson traveling home for weekends or stopping over on his way to or from New York and St. Thomas or to visit his sick and dying mother in the hospital for months on end. He certainly did not travel to his home in Florida for the dominant purpose of engaging in sexual conduct with a person who he knew was under 18 when he did not know, at the time he decided to travel, from whom he was to receive a massage, if he were to receive one at all.

In *Cuellar,* the unanimous Supreme Court linked the term "design" in the money-laundering statute to the terms "purpose" and "plan," and stressed that those terms all required the defendant to "formulate a plan for; devise"; "[t]o create or contrive for a particular purpose or effect"; [carry out] "[a] plan or scheme"; or "to conceive and plan out in the mind." Slip. op. at 12 (citing dictionary definitions). The same link is present here, and it simply cannot be said that Mr. Epstein's design, plan, or purpose in traveling to Palm Beach was to engage in illicit sexual conduct with minors; his design or plan or purpose was simply to return to his home.

Any construction of § 2423(b)'s "for the purpose of" language to include purposes beyond the dominant purpose of the travel would run afoul of the rule of lenity and due process principles discussed earlier. Any attempted prosecution of Mr. Epstein under a more expansive construction of the "for the purpose of" language would also violate the separation of powers doctrine. Congress, which selected the "for the purpose of" language signaled no clear intention to make it a federal crime whenever an actor has engaged in illicit sexual conduct following his crossing of state lines as long as it might be said that sexual activity at his destination was among the activities he pursued there. Congress well knows how to write a statute in this field which eliminates a purpose requirement. *See* 18 U.S.C. § 2423(c)("Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person ..."). § 2423(b) is not such a statute.

Federal court decisions watering down the "for the purpose of " requirement fly in the face of the two Supreme Court decisions addressing that element. See *Hansen* [redacted] *Huff*, 291 U.S. 559 (1934); *Mortensen* [redacted] *United States*, 322 U.S. 369 (1944). *Santos* and *Cuellar* speak loudly and clearly against prosecutors seeing such elasticity in federal criminal statutes, including those enacted to protect important federal interests. In cases involving the federalization of activity that is within the *States'* historic police power, Congress must speak with particular clarity. *See, e.g., Will* [redacted] *Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989).

Relevant Past Cases

We have not been able to find a single federal prosecution based on facts like these—but have voluminous evidence of federal prosecutors routinely declining to bring charges in cases far more egregious than this one. To take just one obvious example, federal prosecutors have self-consciously refrained from involvement in the literally dozens of sexual cases of former priests, opting instead to allow seasoned state prosecutors (like the ones in this case) to pursue the accused former clergymen. That is so despite (1) the large number of victims, (2) the vast geographic diversity of the cases, and (3) the fact that some of these cases involve allegations that the defendant forcibly molested, abused, or raped literally dozens of children—including some as young as five years old—over a period of years. Nonetheless, federal prosecutors have not hesitated to let their state counterparts pursue these cases free from federal interference—even though the sentences meted out vary greatly on account of the fact that "[c]riminal penalties are specific to localities or jurisdictions."[3] The facts of this case, which involve the solicitation of consensual topless massages and some sexual contact, entirely in the privacy of his home and almost entirely by women over the age of 18, pale in comparison to the outright sexual abuse and degradation of preteen minors in many of the priest cases.

Nor does this case bear any of the hallmarks that typify the cases that federal prosecutors have pursued under the federal statutes at issue here. When asked, the closest case suggested by the prosecutors was *United States v. Boehm*—and it hardly could differ more from Mr. Epstein's case. In *Boehm*, the defendant was charged with conspiracy to distribute cocaine and cocaine base to minors, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 859(a); being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); and sex trafficking of children in violation of 18 U.S.C. §§ 371 and 1591. *United States v. Boehm*, Case No. 3:04CR00003 (D. Alaska 2004). Boehm's actions, unlike Mr. Epstein's, also had a strong interstate nexus: Boehm purchased and distributed large quantities of crack cocaine and cocaine that traveled in interstate commerce, and he used his home and hotels (which were used by interstate travelers) to purchase drugs and distribute them to minors while also arranging for these minors to have sex with him and others. Indeed, Boehm not only (1) purchased cocaine in large quantities; (2) distributed the drugs to minors; (3) possessed illegal firearms; (4) and arranged for the minors to have sex with other members of the conspiracy in exchange for drugs; but (5) admitted to knowing the ages of the individuals involved.[4] Here, by contrast, as previous stated, all of the conduct took place in Mr. Epstein's private home in Palm Beach; there was no for-profit enterprise; no interstate component; no use by Mr. Epstein of an instrumentality of interstate commerce; no violence; no force; no alcohol; no drugs; no guns; and no child pornography.

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3 *See* http://www.bishop-accountability.org/reports/2004_02_27_JohnJay/2004_02_27_Terry_JohnJay_3.htm #cleric7.

4 In fact, Boehm and his co-defendants distributed drugs to approximately 12 persons between the ages of 13 and 21. Boehm also had a prior criminal history—and one that clearly showed he was a danger to society: he previously had been convicted of raping both a thirteen year-old girl and a fifteen year-old girl. (Day 7 of Sentencing hearing p. 32).

To the extent there is a similar, but more egregious, local Florida case on the books, it is that of Barry Kutun, a former North Miami city attorney accused of having sex with underage prostitutes and videotaping the sessions. Mr. Kutun pleaded guilty on May 18, 2007 in a Miami-Dade County courtroom as part of an agreement with State prosecutors and he received five years probation and a withholding of adjudication with no requirement to register as a sex offender—all without a shred of involvement by federal prosecutors, who declined to prosecute him. Indeed, given the wide use of the telephone in today's society, it gives a rogue prosecutor carte blanche to turn any local crime into a federal offense. Given the federal government's decision to abstain from prosecuting that case, it is hard to understand how the federal prosecutors responsible for this case think that the State's treatment of Mr. Epstein somehow leaves federal interests substantially unvindicated. There is simply no basis for the federal prosecutors' disparate treatment of Mr. Epstein.

Summary of the Evidence

Finally, we wish to share new evidence—obtained through discovery in connection with the civil lawsuits filed in this matter—which confirms that further federal involvement in this matter would be inappropriate. This testimony taken to date categorically confirms that (i) Mr. Epstein did not target minors; (ii) women under 18 often lied to Mr. Epstein about their ages; (iii) Mr. Epstein did not travel in interstate commerce for the purpose of engaging in illegal sexual activity; (iv) Mr. Epstein did not use the Internet, telephone or any other means of interstate communication to coerce or entice alleged victims; (v) Mr. Epstein did not apply force or coercion to obtain sexual favors; and (vi) all sexual activity that occurred was unplanned and purely consensual. The women's own statements—made under oath—demonstrate the absence of a legitimate federal concern in this matter, and highlight the serious practical difficulties an attempted federal prosecution would face.

- Mr. Epstein did not recruit or obtain these women in interstate commerce (necessary for a conviction under § 1591).
  - [redacted] confirmed that she did not know Mr. Epstein and had absolutely no contact with him—be it through Internet, chat rooms, email, or phone—prior to their arrival at his home. *See* Tab 13, [redacted] Tr. (deposition), p. 30.
  - [redacted] has stated that (like many other women) she first met Mr. Epstein when her friend, [redacted] introduced her to him. *See* Tab 14, [redacted] Tr. A, p. 4-5.
- Mr. Epstein was told the girls were over 18.
  - Ms. [redacted] expressly admitted to lying to Mr. Epstein about her age. *See* Tab 13, [redacted] Tr. (deposition), p. 37 ("Q. So you told Jeff that you were 18 years old, correct? A. Yes.").
  - [redacted] stated that she not only always made sure she had a fake ID with her and lied to Mr. Epstein by telling him she was 18, but that she

also had conversations with other women in which these women hoped that "Jeffrey didn't find out [their] age[s]." *See* Tab 6, Miller Tr., p. 45.

- Ms. Miller also stated that she: "would tell my girlfriends just like [redacted] approached me. Make sure you tell him you're 18. Well, these girls that I brought, I know that they were 18 or 19 or 20. And the girls that I didn't know and I don't know if they were lying or not, I would say make sure that you tell him you're 18." *See* Tab 6, Miller Tr., p. 22.

- Ms. [redacted] stated that Ms. [redacted] told her say that she was 18 if asked. *See* Tab 14, [redacted] Tr. A, p. 8.

- [redacted] stated that she "told him I was 19." *See* Tab 5, [redacted] Tr., p. 16.

- Mr. Epstein did not know these women would be caused to engage in a sex act (necessary for a conviction under § 1591) and any sexual activity that took place was unplanned.

  - Ms. Miller stated "sometimes [Mr. Epstein] likes topless massages, but you don't have to do anything you don't want to do. He just likes massages." *See* Tab 6, Miller Tr., p. 7.

  - Ms. Miller also stated "[s]ometimes [Mr. Epstein] just wanted his feet massaged. Sometimes he just wanted a back massage." *See* Tab 6, Miller Tr., p. 19.

- Mr. Epstein did not use an interstate facility to communicate an illegal objective to the alleged victims (necessary for a conviction under § 2422(b)).

  - Ms. [redacted] confirmed that Mr. Epstein never emailed, texted, or chatted in an Internet chat room with her. *See* Tab 13, [redacted] Tr. (deposition), p. 30.

- Mr. Epstein did not target minors (necessary for a conviction under § 2422(b))

  - Ms. Miller stated, "I always made sure -- I had a fake ID, anyways, saying that I was 18. And [[redacted] (who is Miller's friend who brought her to Mr. Epstein's home)] just said make sure you're 18 because Jeffrey doesn't want any underage girls." *See* Tab 6, Miller Tr., p. 8.

- Mr. Epstein did not use the phone or the Internet to induce proscribed sexual activity (necessary for a conviction under § 2422(b)).

  - Ms. [redacted] stated that there was never any discussion over the phone about her coming over to Mr. Epstein's home to engage in sexual activity: "The only thing that ever occurred on any of these phone calls [with Sarah [redacted] or another assistant] was, 'Are you willing to come over,' or,

'Would you like to come over and give a massage." *See* Tab 14, [redacted] Tr. A, p. 15

- Ms. [redacted] confirmed that she was informed that she was going to Mr. Epstein's house to give him a massage and nothing else, and that no one "said anything to [her] on the telephone [or over the Internet] about sexual activity with Mr. Epstein." *See* Tab 13, [redacted] Tr. (deposition), p. 24-25.

- Ms. [redacted] also confirmed that no one associated with Mr. Epstein ever tried to call her or contact her through the Internet to try to persuade, induce, entice or coerce her to engage in any sexual activity. *See* Tab 13, [redacted] Tr. (deposition), p. 31.

- Mr. Epstein did not travel to Palm Beach for the purpose of engaging in sexual activity with a minor (necessary for a conviction under § 2423(b)).

  - Mr. Epstein spent at least 100 days a year in Palm Beach for family purposes, business purposes, and social purposes, and to maintain a home.

  - While in Palm Beach, Mr. Epstein routinely visits family members and close friends, has seen his primary care physician for checkups and prescribed tests in the Palm Beach area, and until her death in April of 2004, regularly saw his mother who was hospitalized and then convalesced in south Florida.

  - From 2003 through 2005 there was no month when Mr. Epstein did not spend at least one weekend in Palm Beach.

  - The Palm Beach area is the home base for his flight operations, for maintenance of his aircraft, and for periodic FAA inspections.

  - Additionally, Mr. Epstein's pilots and engineers all resided in Florida.

- Mr. Epstein's conduct did not involve force, coercion or violence and any sexual activity that took place was consensual. The witness transcripts are replete with statements such as the following:

  - Ms. [redacted] stated that she was not persuaded, induced, enticed or coerced by anyone to engage in any sexual activity. *See* Tab 13, [redacted] Tr. (deposition), p. 31.

  - Ms. [redacted] stated: "[Mr. Epstein] never tried to force me to do anything." *See* Tab 14, [redacted] Tr. A, p. 12.

  - Ms. Miller stated, "I said, I told Jeffrey, I heard you like massages topless. And he's like, yeah, he said, but you don't have to do anything that you

don't feel comfortable with. And I said okay, but I willingly took it off." *See* Tab 6, Miller Tr., p. 10.

- Ms. Miller also stated "[s]ome girls didn't want to go topless and Jeffrey didn't mind." *See* Tab 6, Miller Tr., p. 23.

- Mr. Epstein did not engage in luring.
  - Mr. Epstein's message books show that several masseuses would regularly call Mr. Epstein's assistants, without any prompting by Mr. Epstein or his assistants, asking to visit Mr. Epstein at his home.
  - Ms. Miller stated "a lot of girls begged me to bring them back [to Mr. Epstein's house]."
- There was no alcohol or drugs involved, a fact that is not in dispute.
- Mr. Epstein has no prior criminal history, a fact that is not in dispute.
- These women do not see themselves as victims.
  - Ms [redacted] indicated under oath that the FBI attempted to persuade her that she was in fact a "victim" of federal crimes when she herself repeatedly confirmed that she was not. *See* Tab 14, [redacted] Tr. A, p. 9-12 and Tab 15, [redacted] Tr. B, p. 7.

Conclusion

Jeffrey Epstein, a self-made businessman with no prior criminal history, should not be prosecuted federally for conduct that amounts to, the solicitation of prostitution. A federal prosecution based on these facts would be an unprecedented exercise of federal power, a misuse of federal resources, and a prosecution that would carry with it the appearance, if not the reality, of unwarranted selectivity given the incongruity between the facts as developed in this matter and the factual paradigms for all other reported federal prosecutions under each of the three statutes being considered. It would require the pursuit of a novel legal theory never before sanctioned by federal law—and that indeed is inconsistent with each of the statutes prosecutors have identified. Accordingly, we respectfully request that you direct the U.S. Attorney's Office for the Southern District of Florida to discontinue its involvement in this matter, and return responsibility for this case to the State of Florida.

Villafana, Ann Marie C. (USAFLS)

From: Jay Lefkowitz [JLefkowitz@kirkland.com]
Sent: Thursday, September 27, 2007 2:53 PM
To: [redacted], Ann Marie C. (USAFLS)
Subject: Re: Conference Call with Bert Ocariz

Marie - I will not be able to get back to you until tomorrow. However, some of the questions he raised cause me some serious concern.

1. Can we get a copy of the indictment (or can you tell me the nature of the crimes against the girls)?

Certainly he should not get a copy of any indictment.

2. When will it be possible to see the plea agreement so that we understand exactly what Epstein concedes to in the civil case?

I don't think he should get the plea agreement either.

3. Is there any cap or other limitation on attorney's fees that the defendant will pay in the civil case?

I can't imagine he would be entitled to anything other than an hourly fee.

4. What is the contemplated procedure for, and timing of, the payment of attorney's fees and costs?

In any event, I need to consider these issues carefully and I cannot agree to any of these issues before we speak. I would suggest we plan on talking tomorrow at 12 pm if you are available.

Jay

----- Original Message -----
From: "[redacted], Ann Marie C. (USAFLS)" [redacted]]
Sent: 09/27/2007 10:51 AM AST
To: Jay Lefkowitz
Subject: Conference Call with Bert Ocariz

Hi Jay – Bert's firm has raised a number of good questions about how they are going to get paid and setting up a procedure that avoids any conflict of interest with their clients. Are you around today to do a conference call? Let me know what times work for you because Bert wants to get their conflicts counsel on the call with us.

These are some of the questions he sent to me. I told Bert that as part of our agreement we (the federal government) are not going to indict Mr. Epstein, but gave him an idea of the charges that we had planned to bring as related to 18 USC 2255. With respect to question 2, do I have your permission to send Bert just that section of the plea agreement that applies to the damages claims (I would recommend sending paragraphs 7 through 10, or at least 7 and 8)? Can you talk with your client about items 3 and 4? I envisioned Shook Hardy sending regular bills to you, with any privileged information redacted, and being paid like every other client pays the bills.

1. Can we get a copy of the indictment (or can you tell me the nature of the crimes against the girls)?

2. When will it be possible to see the plea agreement so that we understand exactly what Epstein concedes to in the civil case?

3. Is there any cap or other limitation on attorney's fees that the defendant will pay in the civil case?

4. What is the contemplated procedure for, and timing of, the payment of attorney's fees and costs?

[redacted]

[redacted]

From: Jay Lefkowitz [JLefkowitz@kirkland.com]
Sent: Thursday, September 27, 2007 10:57 AM
To: [redacted] Ann Marie C. (USAFLS)
Subject: Re: Conference Call with Bert Ocariz

I am available around 4 pm today. Not precisely sure of the time yet. I will speak with my client in the interim.

----- Original Message -----
From: "[redacted] Ann Marie C. (USAFLS)" [[redacted]@usdoj.gov]
Sent: 09/27/2007 10:51 AM AST
To: Jay Lefkowitz
Subject: Conference Call with Bert Ocariz

Hi Jay – Bert's firm has raised a number of good questions about how they are going to get paid and setting up a procedure that avoids any conflict of interest with their clients. Are you around today to do a conference call? Let me know what times work for you because Bert wants to get their conflicts counsel on the call with us.

These are some of the questions he sent to me. I told Bert that as part of our agreement we (the federal government) are not going to indict Mr. Epstein, but gave him an idea of the charges that we had planned to bring as related to 18 USC 2255. With respect to question 2, do I have your permission to send Bert just that section of the plea agreement that applies to the damages claims (I would recommend sending paragraphs 7 through 10, or at least 7 and 8)? Can you talk with your client about items 3 and 4? I envisioned Shook Hardy sending regular bills to you, with any privileged information redacted, and being paid like every other client pays the bills.

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2. When will it be possible to see the plea agreement so that we understand exactly what Epstein concedes to in the civil case?

3. Is there any cap or other limitation on attorney's fees that the defendant will pay in the civil case?

4. What is the contemplated procedure for, and timing of, the payment of attorney's fees and costs?

[redacted]

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† Member of New Jersey & Florida Bars

May 10, 2007

[redacted]
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

VIA HAND-DELIVERY

JEGE, Inc. ("JEGE") and Hyperion Air, Inc. ("Hyperion")

Dear Ms. [redacted]:

I write as counsel to the above noted entities to respond to the subpoenas dated April 24, 2007, served, respectively, on those entities. I understand from Gerald B. Lefcourt and Lilly Ann Sanchez, both counsel to Jeffrey Epstein, that as a result of a telephone conversation had amongst you, Mr. Lefcourt and Ms. Sanchez, you are now seeking documents reflecting:

1. Ownership of JEGE and Hyperion;

2. Assets of JEGE and Hyperion; and

3. Employees of JEGE and Hyperion.

As I believe Mr. Lefcourt and Ms. Sanchez told you, JEGE and Hyperion are each wholly owned by Mr. Epstein. Enclosed is an IRS Form 2553 ("Election by a Small Business Corporation") filed by JEGE, showing that Mr. Epstein is the sole shareholder of that entity. A similar document was filed on behalf of Hyperion, but we have not been able to locate it. As soon as we do, we will forward it to you. I have instead enclosed a share certificate reflecting Mr. Epstein's ownership of 100 shares of Hyperion. I can also represent that I have examined the books and records of that company and state that no other shares have been issued. Thus, Mr. Epstein is the sole owner of Hyperion, as well.

As to the assets of these entities, both entities exist solely for the purpose of owning their respective aircraft. JEGE owns Mr. Epstein's Boeing 727 and Hyperion owns Mr. Epstein's Gulfstream G-IIB. To demonstrate this, enclosed are (i) the Certificate of Aircraft Registration and Standard Airworthiness Certificate for the Boeing 727, showing ownership by JEGE; and (ii) the Certificate of Aircraft Registration and Standard Airworthiness Certificate for the Gulfstream, showing ownership by Hyperion.

As to employees, each of JEGE and Hyperion pays crew costs for the crew members (whom we understand you have interviewed), as well as the costs of contract crew members whom JEGE or Hyperion may sporadically engage. Neither JEGE nor Hyperion employs any other crew members or other personnel.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

JACK A. GOLDBERGER

cc: [redacted]
Gerald B. Lefcourt, Esq.
Lilly Ann Sanchez, Esq.

REGISTRATION NOT TRANSFERABLE

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION
CERTIFICATE OF AIRCRAFT REGISTRATION

This certificate must be in the aircraft when operated.

NATIONALITY AND REGISTRATION MARKS N908JE

AIRCRAFT SERIAL NO. 20115

MANUFACTURER AND MANUFACTURER'S DESIGNATION OF AIRCRAFT
BOEING 727-31
ICAO Aircraft Address Code: 59108661

ISSUED TO

JEGE INC
103 FOULK RD STE 202
WILMINGTON DE 19803-3742

CORPORATION

This certificate is issued for registration purposes only and is not a certificate of title. The Federal Aviation Administration does not determine rights of ownership as between private persons.

It is certified that the above described aircraft has been entered on the register of the Federal Aviation Administration, United States of America, in accordance with the Convention on International Civil Aviation dated December 7, 1944, and with the Federal Aviation Act of 1958, and regulations issued thereunder.

U.S. Department of Transportation
Federal Aviation Administration

DATE OF ISSUE
January 25, 2001

ADMINISTRATOR

AC form 8050-3(3/97) Supersedes previous editions

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION-FEDERAL AVIATION ADMINISTRATION

STANDARD AIRWORTHINESS CERTIFICATE

1 NATIONALITY AND REGISTRATION MARKS	2 MANUFACTURER AND MODEL	3 AIRCRAFT SERIAL NUMBER	4 CATEGORY
N908JE	BOEING 727-31	20115	TRANSPORT

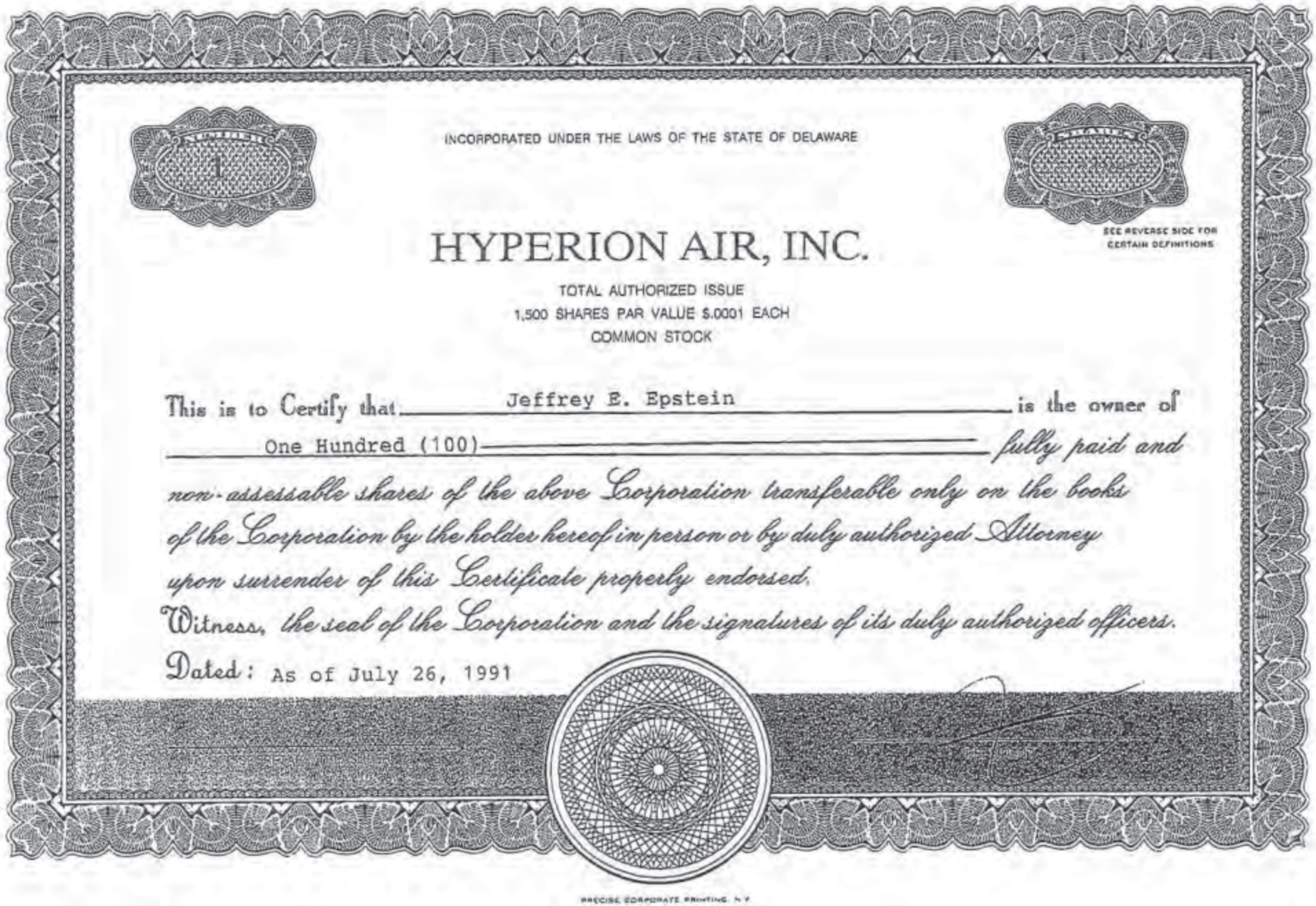
5 AUTHORITY AND BASIS FOR ISSUANCE
This airworthiness certificate is issued pursuant to the Federal Aviation Act of 1958 and certifies that, as of the date of issuance, the aircraft to which issued has been inspected and found to conform to the type certificate therefor, to be in condition for safe operation, and has been shown to meet the requirements of the applicable comprehensive and detailed airworthiness code as provided by Annex 8 to the Convention of International Civil Aviation, except as noted herein.
Exceptions:

NONE

6 TERMS AND CONDITIONS
Unless sooner surrendered, suspended, revoked, or a termination date is otherwise established by the Administrator, this airworthiness certificate is effective provided as the maintenance, preventative maintenance, and alterations are performed in accordance with Parts 21, 43, and 91 of the Federal Aviation Regulations, as appropriate, and the aircraft is registered in the United States.

DATE OF ISSUANCE	FAA REPRESENTATIVE	DESIGNATION NUMBER
May 17 2001	JOHN A. DIAZ	SO17

Any alteration, reproduction or misuse of this certificate may be punishable by a fine not exceeding $1,000 or imprisonment not exceeding 3 years or both. THIS CERTIFICATE MUST BE DISPLAYED IN THE AIRCRAFT IN ACCORDANCE WITH APPLICABLE FEDERAL



NUMBER 1

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

SHARES

SEE REVERSE SIDE FOR CERTAIN DEFINITIONS

HYPERION AIR, INC.

TOTAL AUTHORIZED ISSUE
1,500 SHARES PAR VALUE $.0001 EACH
COMMON STOCK

This is to Certify that Jeffrey E. Epstein is the owner of One Hundred (100) fully paid and non-assessable shares of the above Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

Witness, the seal of the Corporation and the signatures of its duly authorized officers.

Dated: As of July 26, 1991

PRECISE CORPORATE PRINTING, N.Y.

Form **2553**
(Rev. July 1999)
Department of the Treasury
Internal Revenue Service

Election by a Small Business Corporation

(Under section 1362 of the Internal Revenue Code)

▶ See Parts II and III on back and the separate instructions.

▶ The corporation may either send or fax this form to the IRS. See page 1 of the instructions.

OMB No. 1545-0146

Notes: 1. *This election to be an S corporation can be accepted only if all the tests are met under Who may elect on page 1 of the instructions; all signatures in Parts I and III are originals (no photocopies); and the exact name and address of the corporation and other required form information are provided.*

2. *Do not file Form 1120S, U.S. Income Tax Return for an S Corporation, for any tax year before the year the election takes effect.*

3. *If the corporation was in existence before the effective date of this election, see Taxes an S corporation may owe on page 1 of the instructions.*

Part I Election Information

Please Type or Print

Name of corporation (see instructions) JEGE, Inc.	A Employer identification number 51 0405649
Number, street, and room or suite no. (If a P.O. box, see instructions.) 103 Foulk Road, Suite 202	B Date incorporated September 7, 2000
City or town, state, and ZIP code Wilmington, DE 19803	C State of incorporation Delaware

D Election is to be effective for tax year beginning (month, day, year) . . . . . ▶ 1 / 01 / 01

E Name and title of officer or legal representative who the IRS may call for more information
Darren K. Indyke, Vice President

F Telephone number of officer or legal representative
([redacted]

G If the corporation changed its name or address after applying for the EIN shown in A above, check this box . . . . . ▶ ☐

H If this election takes effect for the first tax year the corporation exists, enter month, day, and year of the earliest of the following: (1) date the corporation first had shareholders, (2) date the corporation first had assets, or (3) date the corporation began doing business . . . . . ▶ / /

I Selected tax year: Annual return will be filed for tax year ending (month and day) ▶ December 31

If the tax year ends on any date other than December 31, except for an automatic 52-53-week tax year ending with reference to the month of December, you must complete Part II on the back. If the date you enter is the ending date of an automatic 52-53-week tax year, write "52-53-week year" to the right of the date. See Temporary Regulations section 1.441-2T(e)(3).

J Name and address of each shareholder; shareholder's spouse having a community property interest in the corporation's stock; and each tenant in common, joint tenant, and tenant by the entirety. (A husband and wife (and their estates) are counted as one shareholder in determining the number of shareholders without regard to the manner in which the stock is owned.)	K Shareholders' Consent Statement. Under penalties of perjury, we declare that we consent to the election of the above-named corporation to be an S corporation under section 1362(a) and that we have examined this consent statement, including accompanying schedules and statements, and to the best of our knowledge and belief, it is true, correct, and complete. We understand our consent is binding and may not be withdrawn after the corporation has made a valid election. (Shareholders sign and date below.)		L Stock owned		M Social security number or employer identification number (see instructions)	N Shareholder's tax year ends (month and day)
	Signature	Date	Number of shares	Dates acquired		
Jeffrey E. Epstein 6100 Red Hook Quarter Suite B-3 St. Thomas, USVI 00802			100	1/1/01	090-44-3348	12/31

Under penalties of perjury, I declare that I have examined this election, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of officer ▶ [signature] Title ▶ Vice President Date ▶ 1/24/01

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION-FEDERAL AVIATION ADMINISTRATION

STANDARD AIRWORTHINESS CERTIFICATE

1 NATIONALITY AND REGISTRATION MARKS	2 MANUFACTURER AND MODEL	3 AIRCRAFT SERIAL NUMBER	4 CATEGORY
N909JE	GULFSTREAM G1159B	151	TRANSPORT

5 AUTHORITY AND BASIS FOR ISSUANCE
This airworthiness certificate is issued pursuant to the Federal Aviation Act of 1958 and certifies that, as of the date of issuance, the aircraft to which issued has been inspected and found to conform to the type certificate therefor, to be in condition for safe operation, and has been shown to meet the requirements of the applicable comprehensive and detailed airworthiness code as provided by Annex 8 to the Convention on International Civil Aviation, except as noted herein.
Exceptions:

NONE

6 TERMS AND CONDITIONS
Unless sooner surrendered, suspended, revoked, or a termination date is otherwise established by the Administrator, this airworthiness certificate is effective as long as the maintenance, preventative maintenance, and alterations are performed in accordance with Parts 21, 43, and 91 of the Federal Aviation Regulations, as appropriate, and the aircraft is registered in the United States.

DATE OF ISSUANCE	FAA REPRESENTATIVE	DESIGNATION NUMBER
R July 6 1989	JOHN A. DIAZ	ASO-CSDO-17

Any alteration, reproduction, or misuse of this certificate may be punishable by a fine not exceeding $1,000, or imprisonment not exceeding 3 years, or both. THIS CERTIFICATE MUST BE DISPLAYED IN THE AIRCRAFT IN ACCORDANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

FAA Form 8100-2 (8-82)

REGISTRATION NOT TRANSFERABLE

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION
CERTIFICATE OF AIRCRAFT REGISTRATION

This certificate must be in the aircraft when operated.

NATIONALITY AND REGISTRATION MARKS N909JE

AIRCRAFT SERIAL NO. 151

MANUFACTURER AND MANUFACTURER'S DESIGNATION OF AIRCRAFT
GULFSTREAM AEROSPACE G1159B
ICAO Aircraft Address Code: 53110550

ISSUED TO

HYPERION AIR INC
103 FOULK RD STE 202
WILMINGTON DE 19803-3742

This certificate is issued for registration purposes only and is not a certificate of title. The Federal Aviation Administration does not determine rights of ownership as between private persons.

CORPORATION

It is certified that the above described aircraft has been entered on the register of the Federal Aviation Administration, United States of America, in accordance with the Convention on International Civil Aviation dated December 7, 1944, and with the Federal Aviation Act of 1958, and regulations issued thereunder.

DATE OF ISSUE
March 15, 1994

ADMINISTRATOR

U.S. Department of Transportation
Federal Aviation Administration

AC Form 8050-3 (8/37) Supersedes previous edition

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Facsimile: (561) 820-8777

May 15, 2007

VIA FACSIMILE
Jack A. Goldberger, Esq.
Atterbury, Goldberger & Weiss, P.A.
One Clearlake Centre, Suite 1400
250 Australian Ave S.
West Palm Beach, FL 33401-5015

Re: Subpoenas to JEGE, Inc. and Hyperion Air, Inc.

Dear Mr. Goldberger:

It was a pleasure speaking with you today. As we discussed, the deadlines for complying with the subpoenas to JEGE, Inc. and Hyperion Air, Inc. have been extended to May 29, 2007. If there are any categories for which no documents exist, please ask the Custodian of Records to provide a certificate of nonexistence of records.

Also, following our conversation I received a voicemail from Lilly Ann Sanchez addressing the subpoenas. Since you have provided a written statement that you represent JEGE and Hyperion, I will assume that you alone serve as their counsel unless you tell me otherwise. With that in mind, pursuant to Rule 6(e), I do not intend to discuss matters related to these subpoenas with other attorneys.

Thank you again for your assistance.

Sincerely,

R. Alexander Acosta
United States Attorney

By: Marie Villafaña
A. Marie [redacted]
Assistant United States Attorney

cc: E. Nesbitt Kuyrkendall, FBI

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	4676	
CONNECTION TEL		8358691
SUBADDRESS		
CONNECTION ID		
ST. TIME	05/15 16:57	
USAGE T	00'24	
PGS. SENT	2	
RESULT	OK	

United States Attorney's Office
Southern District of Florida
500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401-6235

DATE: 5/15/07

TO: Jack Goldberger, Esq.

ORGANIZATION:

FAX #: 561 835-8691

SUBJECT: JEGE & HYPERION

FROM: A. Marie Villafaña

(561) 820-8711
(561) 820-8777 (Fax)

NUMBER OF PAGES, INCLUDING THIS PAGE: 2

COMMENTS:

United States Attorney's Office
Southern District of Florida
500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401-6235

DATE: 5/15/07

TO: Jack Goldberger, Esq.

ORGANIZATION:

FAX #: 561 835-8691

SUBJECT: JEGE & HYPERION

FROM: A. Marie Villafana

(561) 820-8711
(561) 820-8777 (Fax)

NUMBER OF PAGES, INCLUDING THIS PAGE: 2

COMMENTS:

Original document:

____ *To follow via regular mail*

____ *To follow via Federal Express*

____ *To follow via hand delivery*

X *Nothing to follow, FAX = original*

U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401-6235
Tel: (561) 820-8711
Fax: (561) 820-8777

May 14, 2007

VIA HAND DELIVERY

Jack A. Goldberger, Esq.
Atterbury, Goldberger & Weiss, P.A.
One Clearlake Centre, Suite 1400
250 Australian Avenue South
West Palm Beach, FL 33401-5015

Dear Mr. Goldberger:

Thank you for your letter of May 10, 2007, and the documents attached thereto. I have enclosed another copy of the grand jury subpoenas that were provided to Bruce Lyons, former counsel for Hyperion and JEGE, on April 25, 2007. The time for responding has passed, so please provide the requested documents as soon as possible. Please also have the Custodians of Records of the Corporations complete the Business Records Certifications and Inventory Forms and return everything to Special Agent Kuyrkendall at the Federal Bureau of Investigation, 505 South Flagler Drive, Suite 500, West Palm Beach, FL 33401-5933.

Thank you for your assistance with this matter.

Sincerely,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: A. MARIE VILLAFAÑA
Assistant United States Attorney

Enclosures

cc: Special Agent E. Nesbitt Kuyrkendall, FBI

Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite #1400
West Palm Beach, FL 33401
(561) 659-8300; fax (561) 835-8691

FAX TRANSMITTAL COVER SHEET

DATE:	**May 17, 2007**
TO:	**Ann Marie C. [redacted], Esq.**
FROM:	**(561) 802-1787**
REMARKS:	**JEGE, Inc. & Hyperion Air, Inc.**
TOTAL PAGES:	**2, including cover sheet**

AMENDED TO INCLUDE GERRY B. LEFCOURT!
PLEASE DISREGARD FIRST LETTER.

ATTERBURY GOLDBERGER WEISS,

* JOSEPH R. ATTERBURY
| JACK A. GOLDBERGER
JASON S. WEISS
* Board Certified Criminal Trial Attorney
| Member of New Jersey & Florida Bars

May 17, 2007

A. Marie Villafaña, Esq.
Assistant United States Attorney
Office of the United States Attorney
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

RE: *JEGE, Inc. ("JEGE") and Hyperion Air, Inc. ("Hyperion")*

Dear Ms. Villafaña:

Thank you very much for your letter dated May 15, 2007 concerning the subpoenas issued to JEGE, Inc. and Hyperion Air, Inc., along with your agreement to extend compliance deadlines until May 29, 2007. I apologize for any confusion concerning representation created by my letter to you of May 10, 2007 on behalf of the corporations, and the subsequent telephone call you received from Lilly Ann Sanchez, also on behalf of the corporations.

Please be advised that I am working with Lily Ann Sanchez and Gerald B. Lefcourt in regard to these subpoenas. Accordingly, please feel free to speak to or communicate with myself, Ms. Sanchez and/or Mr. Lefcourt concerning matters related to the subpoenas.

Very truly yours,

JACK A. GOLDBERGER

cc: SA Nesbitt Kuyrkendall, Federal Bureau of Investigation
Lilly Ann Sanchez, Esq.
Gerald B. Lefcourt, Esq.

One Clearlake Centre, Suite 1400 250 Australian Avenue South West Palm Beach, FL 33401

p 561.659.8300 f 561.835.8691 www.agwpa.com

Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite #1400
West Palm Beach, FL 33401
(561) 659-8300; fax (561) 835-8691

FAX TRANSMITTAL COVER SHEET

DATE:	**May 17, 2007**
TO:	**Ann Marie C. [redacted], Esq.**
FROM:	**(561) 802-1787**
REMARKS:	**JEGE, Inc. & Hyperion Air, Inc.**
TOTAL PAGES:	**2, including cover sheet**

ATTERBURY GOLDBERGER WEISS, P.A.

JOSEPH R. ATTERBURY
JACK A. GOLDBERGER
JASON S. WEISS
* Board Certified Criminal Trial Attorney
† Member of New Jersey & Florida Bars

May 17, 2007

A. Marie Villafaña, Esq.
Assistant United States Attorney
Office of the United States Attorney
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

RE: *JEGE, Inc. ("JEGE") and Hyperion Air, Inc. ("Hyperion")*

Dear Ms. Villafaña:

Thank you very much for your letter dated May 15, 2007 concerning the subpoenas issued to JEGE, Inc. and Hyperion Air, Inc., along with your agreement to extend compliance deadlines until May 29, 2007. I apologize for any confusion concerning representation created by my letter to you of May 10, 2007 on behalf of the corporations, and the subsequent telephone call you received from Lilly Ann Sanchez, also on behalf of the corporations.

Lilly Ann Sanchez and I represent the corporations in regard to these subpoenas. Accordingly, please feel free to speak to or communicate with either Ms. Sanchez or myself concerning matters related to the subpoenas.

[redacted]ery truly yours,

JACK A. GOLDBERGER

cc: [redacted]
Lilly Ann Sanchez, Esq.

One Clearlake Centre, Suite 1400 250 Australian Avenue South West Palm Beach, FL 33401
p 561.659.8300 f 561.835.8691 www.agwpa.com

[redacted], Ann Marie C. (USAFLS)

From: [redacted], Ann Marie C. (USAFLS)
Sent: Tuesday, September 18, 2007 9:13 AM
To: 'Jay Lefkowitz'
Subject: RE: Draft Agreements?

Hi Jay – I know that the U.S. Attorney will not go below 18 months of prison/jail time (and I would strongly oppose the suggestion).

A. Marie Villafaña
Assistant U.S. Attorney
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Phone 561 209-1047
Fax 561 820-8777

From: Jay Lefkowitz [mailto:JLefkowitz@kirkland.com]
Sent: Tuesday, September 18, 2007 8:59 AM
To: [redacted], Ann Marie C. (USAFLS)
Subject: Re: Draft Agreements?

an alternative to what we discussed just now might be to plead to one count of 1512, serve 12 months plus supervised release which would be one year of home detention (if we can make that work), followed by two years of probation in the state on the state charges with the first 6 months being community control.

"[redacted], Ann Marie C. \(USAFLS\)" <Ann.Marie.C.Villafana@usdoj.gov>

09/18/2007 08:44 AM

To "Jay Lefkowitz" <JLefkowitz@kirkland.com>
cc
Subject Draft Agreements?

Hi Jay – I was hoping there would be things for me to read this morning, but I will try to remain patient.

I believe there are only two types of agreements that would apply to this case: (1) a plea agreement to a federal charge or charges; and (2) a non-prosecution agreement (which is really a deferred prosecution agreement because the defendant agrees that if he violates the agreement, the U.S. can prosecute him).

A plea agreement is part of the court file. It is not accessible on-line via PACER, but someone can go to the Clerk's Office to obtain a copy.

A non-prosecution agreement would not be made public or filed with the Court, but it would remain part of our case file. It probably would be subject to a FOIA request, but it is not something that we would distribute without compulsory process.

On the obstruction charges, many of the facts I included in that first proffer were hypothesized based upon our discussions and the agents' observations of Ms. Groff. We will need to interview her to confirm the accuracy of those facts. On a second count, we could rely on the incident where Mr. Epstein's private investigators

followed Saige's father, forcing him off the road. Or, if there is something more recent related to any grand jury subpoenas, we could consider that.

Hope that helps.

A. Marie Villafaña

Assistant U.S. Attorney

500 S. Australian Ave, Suite 400

West Palm Beach, FL 33401

Phone 561 209-1047

Fax 561 820-8777

[redacted], Ann Marie C. (USAFLS)

From: [redacted], Ann Marie C. (USAFLS)
Sent: Tuesday, September 18, 2007 8:44 AM
To: 'Jay Lefkowitz'
Subject: Draft Agreements?

Hi Jay – I was hoping there would be things for me to read this morning, but I will try to remain patient.

I believe there are only two types of agreements that would apply to this case: (1) a plea agreement to a federal charge or charges; and (2) a non-prosecution agreement (which is really a deferred prosecution agreement because the defendant agrees that if he violates the agreement, the U.S. can prosecute him).

A plea agreement is part of the court file. It is not accessible on-line via PACER, but someone can go to the Clerk's Office to obtain a copy.

A non-prosecution agreement would not be made public or filed with the Court, but it would remain part of our case file. It probably would be subject to a FOIA request, but it is not something that we would distribute without compulsory process.

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Hope that helps.

A. Marie [redacted]
Assistant U.S. Attorney
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Phone 561 209-1047
Fax 561 820-8777

[redacted] Ann Marie C. (USAFLS)

From: [redacted] Ann Marie C. (USAFLS)
Sent: Monday, September 17, 2007 1:09 PM
To: JLefkowitz@kirkland.com
Cc: Garcia, Rolando (USAFLS)
Subject: My whereabouts

Hi Jay – I am headed home. If a document is ready to be reviewed later today, can you send a copy to me and also to Rolando (who is stepping in for Andy). Please send to my home e-mail address - [redacted] and give me a call on my cell [redacted] so I can be ready for some discussions tomorrow. If anything else comes up, please don't hesitate to call.

Thanks,
Marie

[redacted], Ann Marie C. (USAFLS)

From: [redacted], Ann Marie C. (USAFLS)
Sent: Monday, September 17, 2007 11:45 AM
To: 'Jay Lefkowitz'
Subject: Non-Prosecution Agreements

Hi Jay – To avoid you having to reinvent the wheel, here is a copy of the last version of the non-prosecution agreement in Word and WordPerfect.


070911 Epstein Non-Prosecution..


070911 Epstein Non-Prosecution..

A. Marie [redacted]
Assistant U.S. Attorney
500 S. Australian Ave, Suite 400
West Palm Beach, FL 33401
Phone 561 209-1047
Fax 561 820-8777